

DRAFT Policy

Surveillance Device Use for Compliance and Law Enforcement Activities

Version 1.0

Adopted by Council at its meeting on xx

Minute No: xx

Division:
Section:

Planning and Regulation
Development Assessment and
Compliance

File Reference:
Historical Reference:

N/A
N/A

THIS PAGE IS BLANK

Table of Contents

| | |
|--|-----------|
| SURVEILLANCE DEVICE USE FOR COMPLIANCE AND LAW ENFORCEMENT ACTIVITIES | 4 |
| OBJECTIVE | 4 |
| DEFINITIONS | 4 |
| SCOPE OF PROCEDURE | 4 |
| RELATED LEGISLATION/DOCUMENTATION | 4 |
| PRIVACY REQUIREMENTS | 5 |
| ESTABLISHING THE USE OF SURVEILLANCE | 5 |
| LAW ENFORCEMENT PURPOSES | 7 |
| KEY PRINCIPLES | 7 |
| SURVEILLANCE DEVICE PLACEMENT | 8 |
| IN CASE OF AN EVENT OR CRIMINAL INCIDENT | 8 |
| MANAGEMENT OF SURVEILLANCE DEVICE AND IMAGES | 8 |
| PHOTOGRAPHIC EVIDENCE | 9 |
| INSTALLATION OF DEVICES AND SIGNAGE | 9 |
| MAINTENANCE OF RECORDS | 10 |
| USE OF IMAGES | 10 |
| IMAGES KEPT SECURELY | 10 |
| RELEASE OF RECORDED MATERIAL | 11 |
| PROCEDURE | 12 |
| APPROVAL | 16 |
| REVIEW OF THIS POLICY AND VERSION CONTROL | 16 |
| ACKNOWLEDGEMENTS | 17 |
| ANNEXURES | 17 |

Surveillance Device Use for Compliance and Law Enforcement Activities

Objective

To assist with the lawful investigation and evidence gathering in respect of any person or company responsible for any illegal waste dumping and littering.

This policy and associated procedures have been developed to ensure compliance with all relevant legislation and policy guidelines pertaining to the use of surveillance devices. The procedure will also ensure correct management of records to protect the privacy and confidential nature of the personal information collected.

Definitions

'**Public sector agency**' has the same meaning as in Section 3 of the Privacy and Personal Information Protection (PPIP) Act,

'**Surveillance footage**' may include images from:

- Surveillance cameras,
- Digital cameras,
- Electronic PIN devices,
- iPhones and iPads

Scope of Procedure

This procedure applies to:

- Council employees (primarily Authorised Officers)
- Consultants/Lawyers/Contractors/Volunteers

Related Legislation/Documentation

A major role of the Council is to monitor and enforce compliance with various legislation, including (but not necessarily limited to) the provisions of:

- Privacy and Personal Information Protection (PPIP) Act 1998
- Government Information (Public Access) (GIPA) Act 2009
- Local Government (LG) Act 1993
- Protection of the Environment Operations (POEO) Act 1997
- Workplace Surveillance (WS) Act 2005
- Surveillance Devices (SD) Act 2007
- Road Rules (RR) 2008
- Environmental Planning and Assessment (EP&A) Act 1979
- Evidence Act 1990 (EA)
- Information and Privacy Commission – Code of Conduct
- Workplace Surveillance – HR Protocol
- State Records Act 1988

Privacy Requirements

The PPIP Act defines personal information as information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion

There are 12 Information Protection Principles (IPP) defined in PPIP Act that apply to the collection, storage, use and disclosure of personal information. The Privacy Management Plan describes how Tweed Shire Council manages personal information with regard to its obligations under PPIP Act.

The Privacy Commissioner provides public sector agencies a number of exemptions to the IPPs for conducting law enforcement activities and sharing data between public sector agencies.

Establishing the use of surveillance

Surveillance devices are a powerful compliance 'tool' which can be deployed to deter illegal activities and to identify any offenders committing offences. The use of surveillance devices requires some effort in both the setup of management systems, and the ongoing implementation of the devices and the images they collect. In all instances Council should ensure it is using:

- The appropriate tool in the circumstances.
- That appropriate systems are implemented to support the efficient and legal use of the devices.
- All staff engaged in the activity and dealing with the devices have the correct delegations to do so.

There are a number of actions that should be addressed prior to the installation of any surveillance devices, namely consideration of staff delegations and evaluation of any requirements the Council has to 'notify' people about the use of the devices. These issues are discussed below.

Staff delegations

Council should review the delegations for all staff using surveillance devices to ensure they are adequate. Although, neither the POEO Act or LG Act specifically state that a surveillance device must be placed and/or managed by an authorised officer or enforcement officer, it is considered appropriate given Section 187 of the POEO Act provides specific powers for these officers to "take photographs".

Staff considering issuing Penalty Infringement Notices or other such action based on the images captured by surveillance devices is required to have the necessary delegations under the relevant legislation.

Only Authorised Officers shall manage the Council's surveillance device systems, co-ordinate the placement and management of devices, and ensure chain of evidence of captured images, as this will be necessary if any legal proceedings

occur in relation to action taken by Council utilising images recording illegal activity.

Officers shall document all actions taken in the installation and maintenance of the surveillance devices.

Public notification of the use of surveillance devices

There is no legislative driver requiring councils to notify people of the use of devices, but it should be noted that the PIPP Act requires councils to take such steps as are reasonable in the circumstances to ensure that, before the information is collected or as soon as possible after, the individual is notified of certain information (e.g. the fact that the information has been collected, the purposes it was collected for, and the intended recipients of the information etc.).

This requirement to notify does not apply if the information is collected for law enforcement purposes however it is more relevant to the collection of images of people not involved in committing an offence.

Staff notification of use of surveillance devices

Where devices are to be installed on (or viewing) Council land, in an area that is considered a 'workplace', the WS Act requires the Council to directly notify staff that they may be recorded on the surveillance devices. The responsibilities for notification to staff are more stringent than those relating to the general public, and require Council to provide prior notice in writing at least 14 days before the surveillance commences.

The notice must indicate the following:

- The kind of surveillance to be carried out (eg covert surveillance);
- How the surveillance will be carried out;
- When the surveillance will start;
- Whether the surveillance will be continuous or intermittent; and
- Whether the surveillance will be for a specified limited period or ongoing.

Camera surveillance of an employee must not be carried out unless the devices used (or device casings or other equipment that would generally indicate the presence of a camera) are clearly visible in the place where the surveillance is taking place and the notices to employees are clearly visible at each entrance to that place.

Covert surveillance devices may be used by Council, provided that surveillance of employees at a particular premises or place will be taken to comply with the requirements of Section 10 and Section 11 of the WS Act, namely:

- Surveillance of an employee must not commence without prior notice in writing to the employee; and

- The notice must be given at least 14 days before the surveillance commences.

This means that the Council may use covert surveillance devices on Council-owned land (e.g. roads or open spaces and reserves) where it may have employees performing work from time-to-time for the purpose of obtaining evidence of illegal activities so long as those employees are adequately notified of the placement of covert surveillance devices in accordance with the requirements of the WS Act.

Law Enforcement Purposes

Surveillance devices shall only be used to collect data for law enforcement purposes.

The intended use of the devices is to identify people and/or vehicles involved in the unlawful activities such as disposal of waste at a known dumping hot spot(s).

Key Principles

The procedure is based on the following guiding principles:

- The covert surveillance device program will be operated fairly, within applicable legislative requirements and only for the purposes for which it is established or which are subsequently agreed in accordance with this procedure.
- The surveillance devices will only be used to identify offences occurring within the area covered by the procedure.
- The surveillance devices 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.
- The public interest in the operation of the surveillance devices will be recognised by ensuring the security and integrity of operational procedures.
- The Team Leader Compliance has primary responsibility for compliance with the purposes and objectives of the procedure, for the maintenance, management and security of the program, and the protection of public interest in relation to the program.
- Access to the surveillance monitoring equipment shall be restricted to authorised staff and will be protected from unauthorised access.

The retention of, and access to recorded material will only be for the purposes provided by this procedure or applicable laws and in accordance with any requirements for the retention and disposal of personal information. Recorded material will be retained for a maximum 28 days unless required for law enforcement purposes or other lawful requirements in accordance with the State Records Act.

Surveillance Device Placement

The determination of where to place surveillance devices requires careful consideration of a number of factors:

- Council must be the land owner, or otherwise must obtain written consent of the land owner prior to entering land, installing and maintaining the device in accordance with Section 8 of the SD Act.
- The device should be placed in a location (considering camera angle and distance from potential illegal activity) to maximise the potential to capture images which assist in proving the required elements of offences.
- The device should be placed in a location that limits the ability for theft or damage from vandalism.

Council should avoid placing devices in close proximity to private land as this may place nearby landowners at risk from people trespassing in an attempt to locate, damage or steal the surveillance devices.

In Case of an Event or Criminal Incident

In the event that an authorised staff member observes footage and/or recorded materials which are considered to capture an indictable offence, the staff member will:

- i. refer the incident as soon as possible to their supervisor;
- ii. notify the Police as to the circumstances of any criminal event; and
- iii. ensure footage is secured, saved and marked appropriately in the event that it is required for law enforcement or legal purposes.

Management of Surveillance Device and Images

If the images captured by the surveillance devices are used in legal proceedings against an offender, Council may be required to provide evidence supporting the correct operation and maintenance of the surveillance device. As such it is important that the Officer responsible for installing and maintaining the device should have a good knowledge of how the device operates (e.g. what type of device it is and what the recording mechanism is, how frequently it records, and what it does/does not record) and be able to easily locate the device operating manual.

A 'Surveillance File' shall be set up to record any actions taken by the responsible officer/s including information pertaining to:

- Device installations and movements – including dates installed and person/s installing.
- Device type, operation and calibration.
- Checking of devices and maintenance.

- Images produced, transferred or deleted.

Each note should be dated and saved and should identify the author of the note. Templates to record required information are attached to this procedure.

Photographic Evidence

There is no right to privacy that protects a person's image if photographed in a public place. There is also no restriction on taking photographs of people on private property if taken from public property.

Council's authorised officers will at times collect photographic evidence of offences observed. This photographic evidence may contain images of people and vehicles and therefore will be treated as personal information. If photographs taken by Council were to be characterised as containing personal information then Council will handle and store the personal information to prevent access to these images in accordance with PPIP Act, noting exemption contained in Section 23 concerning law enforcement and related matters. Access will be available to authorised officers of Council only.

Installation of Devices and Signage

Signage (with appropriate wording as discussed below) is to be used in conjunction with surveillance devices as:

- It may satisfy the requirement of the PPIP Act to notify people that their personal information may be collected.
- It allows offences under the LG Act pertaining to Notices to be enforced.
- It provides a visual deterrent to potential law-breakers.
- It removes excuses by improving awareness of offences and penalties.

Signage must be clearly legible and use a font that is large enough to be read from where a person would reasonably read the sign. Signage should be located at each entrance to the whole/part of parcel of land or in a conspicuous place in accordance with Section 670 of the LG Act. This means that Council should post as many notices/signs as is appropriate to ensure that it is reasonably likely that every person who enters the land (through normal entries) will see the notice.

The wording on the signage should notify the public that surveillance devices may be in use, the purpose of such and that the footage from the devices may be used for the purposes of investigating potential infringements of the LG, POEO or other applicable legislation.

To assist with establishing chain-of-custody of evidence, ensure that device and signage location is recorded accurately. This would involve making records of the Global Positioning System (GPS) location of devices and signage, the date and time installed/moved and details of the person who installed the device. Taking photographs of the devices and signage at the time of installation is also required.

To ensure compliance with Section 7 of the SD Act, relating to recording of private conversations, devices should have audio recording turned off or be set to still image capture only. If the device is calibrated to operate in a specific manner (eg photo mode selected over video mode, sensitivity level selected) these details should be recorded.

Maintenance of Records

Use of Images

As per the requirements of the PPIP Act, Council Officers are to ensure that surveillance images and information obtained from these images are only used for the purpose for which they were gathered (i.e. for purposes of investigating potential offences). To assist with establishing chain-of-custody of evidence (by showing images have not been altered), all images are to be stored securely and accurate records are to be kept at all stages after capture.

All images captured around the time of the offence should be kept. Care is to be taken to keep a complete set of unedited images relating to an offence as these may be required as evidence in legal proceedings and Council may need to show the images are 'as recorded'. If capturing video images, continuous blocks of footage around images containing any evidence of an offence must be kept. If more than one device is used, ensure images from all devices relating to a potential offender are kept.

Council must not use or disclose images captured of a person that is not engaged in an offence unless it is for the purpose of investigating potentially unlawful activity. If Council collects images of people not engaged in an offence, these are not to be retained unless there is a lawful need (e.g. because it is part of the same footage that pertains to evidence that needs to be retained or for the gathering of relevant intelligence).

Personal information (including images) must be disposed of securely and in accordance with requirements of Section 12 of the PIPP Act and Councils' record-keeping requirements. Records shall be maintained detailing the movement of images from a device to a storage place (whether electronic or hard copy). If the responsible person deletes images while in the field (e.g. when no relevant or potentially relevant images were captured), the person should make a note on the surveillance file that images were captured on a specific date at a specific location but were deleted by that person because no relevant or potentially relevant images were captured. See attached 'Device Maintenance Log' template to record this information.

Images Kept Securely

Under the PPIP Act, Council must ensure personal information (including images from surveillance devices) is protected by taking reasonable security safeguards against loss, unauthorised access, use, modification, disclosure or other misuse. A record should be made every time any person accesses the images and the reason for such access.

Release of Recorded Material

Access to all recorded material will be managed in accordance the requirements of the GIPA Act, the PPIP Act and Council's Privacy Management Plan.

A request for surveillance footage made by a member of the general public shall be made in writing and addressed to the General Manager. In some instances a formal GIPA application will be required along with payment of the application fee and processing charges

Surveillance footage shall be released to authorised persons of a public sector agency in line with PPIP Act and relevant guidelines issued by the IPC.

Upon collection of requested surveillance footage the authorised staff member shall ensure that the authorised person has signed for the acceptance of such footage acknowledging it contains private and personal information.

All footage and records will be subject to random compliance inspection.

Surveillance footage may be released to the media for educational purposes, but only with the authority of the Director Planning and Regulation.

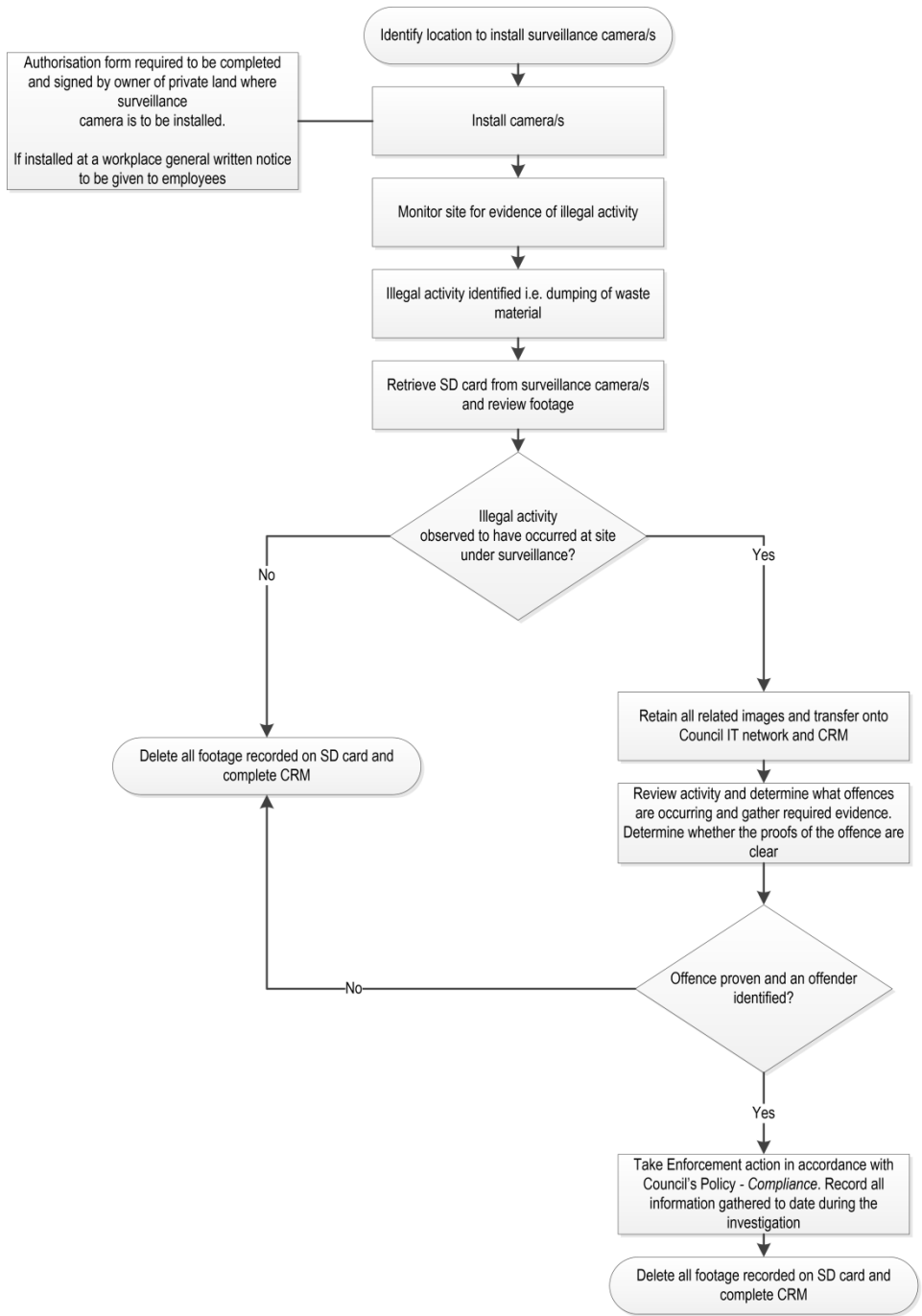
DRAFT



Procedure

Part One: Surveillance Camera Evidence

Surveillance Camera Evidence



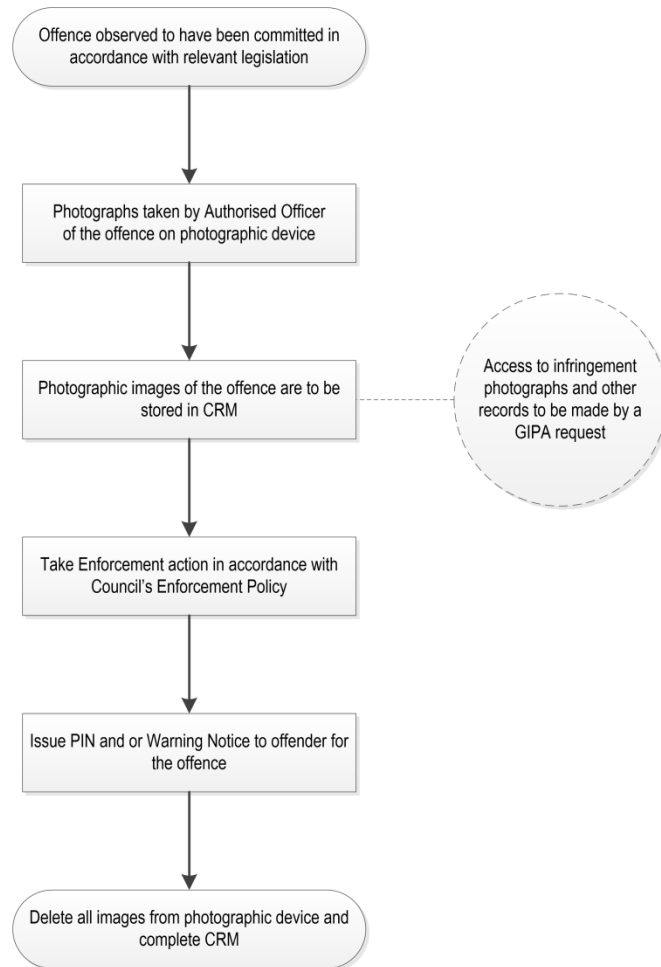
Part One: Surveillance Camera Evidence

| Steps | Action Required |
|--------------|---|
| 1 | <p>Identify location to install device</p> <p>Devices are to be installed in locations within the Tweed Shire Council area that have been identified as being subject to an incidence of waste dumping, littering, vandalism, graffiti or other offences.</p> <p>These locations are to be determined on the basis of incidents identified by Council's Authorised Officers. The number and location of devices may vary from time to time and will be subject to approval from the Manager development Assessment and Compliance or any other officer delegated by the Manager.</p> <p>Device type and operation will be determined on a case by case basis.</p> |
| 2 | <p>Install devices</p> <p>Ensure all staff involved have the correct delegations.</p> <p>Ensure sound is turned off.</p> <p>If to be placed on private property ensure written approval is given by the property owner.</p> <p>Complete 'Covert Surveillance Device Installation Form'.</p> <p>Determine if the site is a 'Workplace', if it is a workplace prior written notice of the surveillance shall be provided to employees in accordance with the requirements of the Workplace Surveillance Act.</p> <p>Photograph installed devices.</p> |
| 3 | <p>Monitoring site for signs of illegal activity</p> <p>Examine site and if an incident has occurred, photograph any evidence and make notes of inspection and findings.</p> |
| 4 | <p>Retrieve SD card for review of footage</p> <p>When an incident has been identified record:</p> <ul style="list-style-type: none"> • Type of incident including description, • Date and time of incident, • Authorised Officer, • Notify Police in writing if a criminal offence has been identified, • Ensure footage is secured (save all images if images are of law enforcement value even if only 1 in 1000 have law enforcement value), saved and marked appropriately in the event it is required for law enforcement or legal purposes. • Delete all images if nothing of law enforcement value obtained. |

| | |
|---|--|
| 5 | <p>Enforcement Action</p> <p>Need more evidence?</p> <ul style="list-style-type: none"> • Examine dumped waste, • Vehicle owner search, • Notices to provide records and information, • Interviews with persons of interest, and • Contemporaneous notes. <p>If an offence has been proven and a person responsible has been identified take action.</p> |
| 6 | <p>Evaluation and Review</p> <p>Council is responsible for ensuring compliance with the Procedure.</p> <p>Council is required to investigate any alleged breaches of the procedure. If a breach is found to have occurred, Council will remedy the breach to the extent possible.</p> <p>Complaints in relation to the management or operation of covert surveillance devices should be made in writing to Council in accordance with the Complaints Handling Procedure/Compliments and Complaints Handling Policy.</p> |

Part Two: Photographic Camera Evidence

Photographic Camera Evidence



NOTE:

In broad terms there is no general right to privacy in NSW or Australia which would preclude a Council officer from taking photographic or other images in a school zone or any other zone as supporting evidence for a breach of the road rules. The link from the Arts Law Centre (<http://www.artslaw.com.au/info-sheets/info-sheet/street-photographers-rights/>) summarises the law around the topic of taking photographs in public places.

NSW government agencies and Councils are bound by the provisions in the Privacy and Personal Information Protection Act (<http://www.ipc.nsw.gov.au/ppip-act>). If the photographs taken by Council were to be characterised as containing personal information then the Council is bound by the information protection principles in the Act, noting however the exemptions contained in Section 23 concerning law enforcement and related matters.

Part Two: Photographic Camera Evidence

| Steps | Action Required |
|-------|--|
| 1 | Offence observed, ensure appropriate delegations and rights of access/entry (if on private property). |
| 2 | Photographs taken, ensure date and time stamped and images are clear and proofs of offence are sufficient. |
| 3 | Take appropriate action in accordance with Council's Enforcement Policy ie issue Penalty Infringement Notices (PINs) or Warning Notice etc. |
| 4 | Ensure all photographic evidence is transferred to secure and protected storage location in ECM and or destroyed if not needed for law enforcement purposes. |
| 5 | Customers advised application to access photographic evidence made through a GIPA application (including payment of the relevant fee). |

Approval

This policy was approved at Council's meeting on xxxx.

Review of this Policy and Version Control

This Procedure will be reviewed every four years or when legislative changes affect the Procedure.

| Version History | | |
|-----------------|---|-------------------|
| Version # | Summary of changes made | Date changes made |
| Eg: 1.1 | <i>Brief overview of changes made: Eg: Amended legislation, Major Re-write to enhance content, etc.</i> | <i>dd/mm/yyyy</i> |
| | | |
| | | |
| | | |
| | | |

Acknowledgements

It is acknowledged that materials and assistance in writing this policy was sourced from the following:

- 1. Ombudsman New South Wales Enforcement guidelines for Councils
- 2. Ombudsman New South Wales – Model Compliance and Enforcement Model Policy
- 3. Ballina Shire Council – Surveillance Device use for compliance and Law Enforcement Activities
- 4. Blacktown City Council – Illegal Dumping Action Plan

Annexures

Annexure 1: Record of Placement of Covert Surveillance Device

Officer Name:

Device Serial Number:

Is the placement for enforcement purposes? Y / N

Who approved the placement:

Has landowner consent been obtained? Y / N (copy of signed land owners consent attached)

Specific purpose placement:

.....

Location (address and/or GPS co-ordinates):

.....

Date placed:

Signature of officer:

Date recovered:

Images / video footage of law enforcement value captured Y / N
If No, delete all images and sign off when completed.

Signature of Officer:Date:

OR

Transfer all images to secure locked storage location and sign off when completed.

Signature of Officer:Date:



Annexure 2: Authorisation for Use of Surveillance Devices on Private Property

I/We.....

Of.....

give my/our consent, permission and authority for Officers of the Tweed Shire Council to install, operate, maintain and retrieve surveillance devices at my business/residential premises or vacant land located at

.....

.....

for the sole purpose of detecting the occurrence of illegal activity, within the vicinity of the above stated premises.

Start Date

End Date

I/We declared that we are the owners/occupiers of the above stated premise and give this consent in accordance with Section 8 of the Surveillance Devices Act 2007.

Print name.....

Signature(s).....

Date

Officer Signature

Date

