

# Policy No. 8: Use of Surveillance by Third Parties on Council Property

## POLICY MANUAL

<b>Policy No. 8</b>	Use of Surveillance by Third Parties on Council Property
<b>Purpose</b>	The purpose of this Policy is to provide a framework for how surveillance can be used by third parties on property owned or managed by the Meander Valley Council.
<b>Department</b>	Governance and Community Wellbeing
<b>Author</b>	Anthony Kempnich, Manager Governance and Legal
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## POLICY

### 1. Definitions

<i>Approved Legitimate Need</i>	A justifiable case for Surveillance that has been approved by the Council according to the process at section 4.9.1.
<i>Complaint Procedure</i>	The procedure described at section 4.6.
<i>Council</i>	The Meander Valley Council.
<i>Council Property</i>	Any Property owned, leased or managed by the Council.
<i>Law</i>	Includes: <ul style="list-style-type: none"><li>(a) principles of law or equity established by decisions of courts;</li><li>(b) legislation and subordinate legislation; and</li><li>(c) requirements, approvals (including conditions) and guidelines of any Government Body that have force of law.</li></ul>
<i>Property</i>	Includes: <ul style="list-style-type: none"><li>(a) any land, whether with or without any building, structure, fixture or other improvement;</li></ul>

- (b) any building, structure, fixture or other improvement, with or without rights to the underlying land; and
- (c) any estate, right, title, or interest (legal or equitable) in land, buildings, structures or improvements.

*Property User*

Any of the following that leases, subleases, licenses, hires, manages, or otherwise has control, authority or possession over Council Property (including their employees, authorised contractors, sub-contractors, agents, licensees, or other representatives):

- (a) a natural person;
- (b) a body corporate (regardless of how it is incorporated); or
- (c) a body politic (other than the Crown or Council).

*Property User Worker*

Includes any Property User, or a Property User's employees, authorised contractors, sub-contractors, agents, licensees, or other representatives.

*Surveillance or Surveil*

The use of a Surveillance System.

*Surveillance Direction*

A direction of the type described at section 4.9.3(a).

*Surveillance System*

Includes one or more device, instrument, apparatus, pieces of equipment, program, software or thing (or system of the same) that is capable of one or more of the following:

- (a) recording still or moving images or observing visually (excluding spectacles, contact lenses or a similar device used by a person with impaired sight to overcome that impairment);
- (b) overhearing, recording, monitoring, or listening to a conversation or words spoken by or to any person (excluding a hearing aid or similar device used by a person with impaired hearing to overcome the impairment and permit that person to hear only sounds ordinarily audible to the human ear);
- (c) recording or monitoring the input of information into, or the output out of, a computer or other device, directly or via a real or private network; and
- (d) determining or monitoring the geographical location of a person or an object.

## *Surveillance Record*

Includes:

- (a) a record, of any type, that is captured, documented, or stored in any way by, via or because of a Surveillance System; and
- (b) a live stream of content captured by, via or because of a Surveillance System.

## **2. Objective**

This Policy:

- (a) recognises that unregulated use of surveillance can lead to extreme encroachments on personal privacy and personal integrity (especially for vulnerable people) and the degradation of public space amenity;
- (a) understands that surveillance, used in a well-regulated and appropriate manner, can be essential for achieving desired community outcomes, like security and safety;
- (b) balances the community's need for well-regulated surveillance with its interests in personal privacy, personal integrity, and public space amenity; and
- (c) defines a framework for how Surveillance Systems can be used by third parties on property owned or managed by the Council.

## **3. Scope**

This Policy:

- (a) applies to all Property Users and Property User Workers; and
- (b) does not apply to the Crown or Council.

## **4. Policy**

### **4.1 Restriction on Use of Surveillance**

A Property User must not use a Surveillance System on Council Property unless:

- (a) there is an Approved Legitimate Need for use of a Surveillance System; and
- (b) the use complies with:
  - i. this Policy,
  - ii. any lease or other contractual arrangement that applies to the Property or Property User,
  - iii. the *Privacy Act 1988* (Cth) and *Personal Information Protection Act 2004*, and
  - iv. all other applicable Laws.

### **4.2 Fields of View**

The visual or audio captured by a Surveillance System must:

- (a) be confined to the smallest area required to fulfil the Approved Legitimate Need;
- (b) not include any sleeping areas, accommodation quarters, toilets, bath houses, saunas, change rooms, including the entrances or exits to the same, or any other area where privacy would reasonably be expected; and
- (c) not include any area outside of Council Property.

### **4.3 Excluded Capabilities**

Any Surveillance System must not use the following functionality unless all persons captured within the Surveillance Record have agreed in writing to the use of the function:

- (a) the capturing, processing, or use of genetic information about an individual; or
- (b) the capturing, processing, or use of biometric information or biometric templates, including for the purpose of automated biometric verification or biometric identification.

### **4.4 Management of Surveillance Records**

- (a) A Property User using a Surveillance System on Council Property must ensure its Surveillance System complies with the following requirements:
  - i. Surveillance Records must only be—
    - 1. accessible by Property User Workers with a Registration to Work with Vulnerable People, and
    - 2. accessed for the purpose of fulfilling the Approved Legitimate Need;
  - ii. a maximum of two Property User Workers have access to Surveillance Records;
  - iii. the Property User must maintain a record of which Property User Workers had access to Surveillance Records and when; and
  - iv. Surveillance Records must be deleted permanently after 30 days, unless being used by law enforcement in an ongoing investigation.
- (b) The rules at (a) do not apply if to the extent that:
  - i. the Property User is a sporting club;
  - ii. the Surveillance System is used exclusively for recording sporting matches;
  - iii. the field of view of the Surveillance System only captures the sporting field;
  - iv. all players (and, where the player is under 18, their guardians) have been notified of the Surveillance System and its purpose; and
  - v. the Surveillance Records contain footage only of sporting matches.

### **4.5 Signage**

A Property User using a Surveillance System on Council Property must erect and maintain signage that:

- (a) is prominently displayed and visible in all areas that are captured by the Surveillance System;
- (b) tells the users they are subject to Surveillance;
- (c) describes the purpose of the Surveillance; and
- (d) describes a way for accessing the Property User's Complaint Procedure and for contacting the Property User.

### **4.6 Complaint Management**

- (a) A Property User using a Surveillance System on Council Property must establish and maintain a procedure for managing complaints related to the Property User's use of Surveillance (Complaint Procedure).

- (b) A Property User's Complaint Procedure must include a timeframe of no more than 10 days between receiving and responding to a complainant.
- (c) In the first fortnight of each quarter of the year, the Property User must provide the Council with a report including the following details for each complaint the Property User received in the preceding quarter:
  - i. when the complaint was received;
  - ii. a de-identified copy of the complaint text;
  - iii. when the Property User responded to the complaint; and
  - iv. any actions taken by the Property User in response to the complaint.

#### **4.7 Insurance Requirements**

A Property User who uses a Surveillance System on Council Property must hold insurance policies that:

- (a) are held with a reputable insurer carrying on insurance operations in Australia;
- (b) insure against any claims, up to a value of \$20,000,000, arising out of the Property User's use of the Surveillance System; and
- (c) indemnify the Council against any claims arising out of the Property User's use of the Surveillance System.

#### **4.8 Liability**

The Council is not liable for any actions, claims, demands, losses, damages, costs or expenses

- (a) that the Property User is subject to, or
- (b) for which the Property User becomes liable for, in connection with, or arising out of, the Property User's Surveillance or compliance (or failed compliance) with this Policy.

#### **4.9 Council Involvement**

##### *4.9.1 Approved Legitimate Need*

- (a) An Approved Legitimate Need occurs when:
  - i. the Property User has demonstrated, to the Council, a legitimate need for Surveillance; and
  - ii. the Council has approved that legitimate need in writing.
- (b) In assessing whether to approve a legitimate need, the Council:
  - i. will consider whether the use of Surveillance is proportionate and justifiable when balanced against interests such as personal privacy, personal integrity, and public amenity; and
  - ii. may direct the Property User to carry out activities, including, but not limited to
    - 1. a Privacy Impact Assessment,
    - 2. consultation with the public or other groups, and
    - 3. publication or sharing of information for public viewing.
- (c) Council retains ultimate discretion about whether it:
  - i. approves or declines a legitimate need; and
  - ii. limits the use of Surveillance in any way.

- (d) The Council's granting of an Approved Legitimate Need in no way guarantees, suggests or implies that a Property User's Surveillance complies with:
  - i. this Policy as a whole;
  - ii. any lease or other contractual arrangement that applies to the Property or Property User;
  - iii. the *Privacy Act 1988* (Cth) and *Personal Information Protection Act 2004*; or
  - iv. any other applicable Laws.
- (e) Despite anything in this Policy, including the granting by the Council of an Approved Legitimate Need, it is the responsibility of the Property User to ensure that their use of Surveillance complies with:
  - i. this Policy;
  - ii. any lease or other contractual arrangement that applies to the Property or Property User;
  - iii. the *Privacy Act 1988* (Cth) and *Personal Information Protection Act 2004*; and
  - iv. all other applicable Laws

#### 4.9.2 Audit by Council

The Council may, from time to time, review, monitor or audit the Property User's use of Surveillance and any documentation or records related to it.

#### 4.9.3 Directions by Council

- (a) A Property User who uses a Surveillance System on Council Property must comply with any reasonable direction given by the Council in relation to the Property User's Surveillance (Surveillance Direction), including, but not limited to:
  - i. providing access to the Surveillance System or other documentation for auditing; or
  - ii. a direction to stop using Surveillance.
- (b) If a Property User fails to comply with a Surveillance Direction, the Council may take action, including, but not limited to:
  - i. terminating the lease, sublease, licence or any other contractual arrangement between the Council and the Property User;
  - ii. requiring the Property User remove the Surveillance System; and
  - iii. referring the Property User or Property User Workers to law enforcement or other appropriate authorities.

### **4.10 Conflicting Requirements**

If there is a conflict, or appearance of a conflict, between obligations in any of the following, the Property User must comply with the strictest obligation:

- (a) this Policy;
- (b) any lease or other contractual arrangement that applies to the Property or Property User;
- (c) the *Privacy Act 1988* (Cth) and *Personal Information Protection Act 2004*; or
- (d) any other applicable Laws.

## **5. Legislation and Related Standards**

*Listening Devices Act 1991*

*Personal Information Protection Act 2004*

*Privacy Act 1988 (Cth)*

*Registration to Work with Vulnerable People Act 2013*

*Child and Youth Safe Organisations Act 2023*

## **6. Responsibility**

Responsibility for the operation of this Policy rests with the General Manager.