



WALGETT SHIRE COUNCIL

LOCAL ORDERS POLICY

2009

For orders issued under the Local Government Act 1993.

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PART 1 - PRELIMINARY

1. What is the name of this Policy?

This policy (“the policy”) is called the Walgett Shire Council Local Orders Policy 2009.

2. Where does the policy apply?

It applies to the whole of the Walgett Shire Council local government area.

3. What is the purpose of this Policy?

The Policy aims:

- To make the Council’s policies and requirements for orders readily accessible and understandable to the public.
- To ensure consistency and fairness in the manner in which the Council deals with issuing orders.
- To establish a system which can effectively resolve disputes and conflicts as they arise.

4. When did the Policy commence?

The Policy commenced on the date on which it was adopted by the Council.

NOTE: *This Policy was adopted by the Council on [DATE].*

Adoption of the Policy was publicly notified in [NEWSPAPERS AND DATES].

5. Have there been any amendments to the Policy?

The Policy incorporates the amendments as listed.

Amendment No	Date Adopted	Minute No	Date Commenced	Notified in Local Paper
Nil	Nil	Nil	Nil	Nil

6. When will the Policy be revoked?

The Policy is automatically revoked at the expiration of 12 months after the declaration of the poll for the next general election, unless the Council revokes it sooner.

NOTE: Automatic revocation of the Policy is provided for by Section 165 of the Act.

Section 163 of the Act requires that the Policy is void if it is inconsistent with the Act or the regulations. Section 164 of the Act requires that the policy cannot impose a more onerous criterion than does the Act or regulations in relation to a specified aspect of an activity.

PART 2 – CRITERIA COUNCIL MUST CONSIDER

There are various statutory criteria that Council must consider when giving an order, as imposed by the Local Government Act 1993, as well as standards derived from the Local Government (General) Regulation 2005. This policy also adopts additional criteria for consideration.

Details of the various types of orders are provided under the respective headings below, including:

- a) To do what? – what types of action can be required to be taken.
- b) In what circumstances? – restrictions on the particular circumstances in which an Order may be given.
- c) To whom? – who must the order be issued to.

Order No. 5 (a), (b), (c), (d) (e) and (f) – Various matters

To do what?

To take such action as is necessary to bring into compliance with relevant standards, or requirements set or made or under this Act:

- a) A camping ground, caravan park or manufactured home estate.
- b) A moveable dwelling or manufactured home.
- c) A building or a temporary structure used as a place of public entertainment.
- d) A place of shared accommodation.
- e) A hairdressers shop or beauty salon.
- f) A mortuary.

In what circumstances?

Failure to comply with relevant standards or requirements set or made by or under this Act or under the Local Government Act 1919.

To whom?

Owner, occupier or manager.

Criteria

When determining whether a Notice of Proposed Order, or Order, is to be given the following criteria are to be taken into consideration, where relevant:

- a) The provisions of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. See Clause 82 of the Local Government (General) Regulation 2005.
- b) Clause 11 - “Adoption of Building Code of Australia” AND Schedule 1, Part 1 – “Management and Use of Places of Public Entertainment”, in the Local Government (General) Regulation 2005.
- c) Schedule 2, Part 1-“Standards for Place of Shared Accommodation” in the Local Government (General) Regulation 2005. See Clause 83 of the regulation.

- d) Schedule 2, Part 2-“Standards for Hairdresser Shops” in the Local Government (General) Regulation 2005. See Clause 84 of the regulation.
- e) Schedule 2, Part 3 “Standards for Beauty Salons” in the Local Government (General) Regulation 2005. See Clause 85 of the regulation.
- f) Schedule 2, Part 4 “Standards for Mortuaries” in the Local Government (General) Regulation 2005. See Clause 86 of the regulation.

Order No. 5 (h) – Water and sewerage supply systems

To do what?

To take such action as is necessary to bring into compliance with relevant standards, or requirements set or made or under this Act:

- a) a water meter, water supply or sewerage system on premises.

In what circumstances?

Failure to comply with relevant standards or requirements set or made by or under this Act or under the Local Government Act 1919. Also see Clause 88 of the Local Government (General) Regulation 2005.

To whom?

Owner, occupier or manager or, in the case of a water meter, water supply or sewerage system in respect of which a defect occurs in work due to faulty workmanship of, or defective material supplied by, a licensed contractor (being the holder of a licence in force under the Home Building Act 1989 authorising the holder to contract to do the work) within 12 months after the work is carried out or the material is supplied, the licensed contractor.

Criteria

When determining whether a Notice of Proposed Order, or Order, is to be given the following criteria are to be taken into consideration, where relevant:

- a) Whether the circumstances have arisen within 12 months of work being undertaken on the affected part of a water supply or sewerage system by a licensed contractor.
- b) Whether an order has been made, or is being considered, by the Consumer, Trader and Tenancy Tribunal under the Home Building Act 1989 against a licensed contractor.
- c) Whether the circumstances are unrelated to the work of a licensed contractor.

Order No. 7 – Fence land

To Do What?

To fence land.

In What Circumstances?

Public health, safety or convenience renders it necessary or expedient to do so and there is no adequate fence between the land and public place.

To Whom?

Owner or occupier of land.

Criteria

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration:

- a) Whether the condition, location or use of the land poses a threat to the health, safety and convenience of the public.

Order No. 8 – Identify premises

To Do What?

To identify premises with such numbers or other identification in such a manner as is specified in the Order.

In What Circumstances?

Premises have a frontage to or entrance from a road and there are no markings that can readily be seen and understood from the road.

To Whom?

Owner or occupier of land.

Criteria

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration:

- a) Whether there is unauthorised use of, or duplication of, numbers.
- b) Whether numbers are not in accordance with the street patterns.
- c) Whether there is potential for confusion in the identification of premises.
- d) Whether the owner/occupier had not complied with Council's request for rectification.

Order No. 9 - Waterbody

To Do What?

To fence, empty, fill in or cover up a hole or waterhole in a manner specified in the Order.

In What Circumstances?

Hole or waterhole is or may become dangerous to life.

To Whom?

Owner or occupier of land

Criteria

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration:

- a) The hole or waterhole is located within an urban area and is directly accessible from a public place or another private property and/or

- b) The hole or waterhole is not adequately covered or fenced to the minimum requirements of the Swimming Pools Act 1992 to prevent direct access to it from a public place or any other private property and,
- c) The nature, location and depth of the hole or waterhole is considered to be dangerous to life.

Criteria Does not Include:

Any hole or water hole that falls under the definition of a swimming pool as defined in the Swimming Pools Act 1992, or one that is located outside of an urban area.

Order No. 10 - Articles

To Do What?

To remove or stack articles or matter, to cover articles or matter, to erect fences or screens or to plant trees.

In What Circumstances?

Land is in the immediate vicinity of a public place and is used for the storage of articles or matter so as to create or be likely to create unsightly conditions.

To Whom?

Owner or occupier of land

Criteria

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration:

- a) Definition of “article” or “matter” includes but is not limited to:-
 - I. Disused motor vehicles, caravans, trailers, boats or associated parts;
 - II. Disused machinery, equipment and appliances;
 - III. Old, used or second hand materials (including building materials);
 - IV. Sand, soil, rock, blue metal and any other material derived from any extraction or dredging process;
 - V. Any organic or vegetative material;
 - VI. Any industrial or commercial waste products;
 - VII. Any household rubbish or waste;
 - VIII. Any recycled or composted material;
 - IX. Furniture.
- b) Definition of “Land in the immediate vicinity of a public place” is any land that immediately adjoins a public place.
- c) The article(s) or matter must be visible from the public place.

Order No. 11 – Environmental damage

To Do What?

To do or to refrain from doing such things as are specified in the order to prevent environmental damage, to repair environmental damage or to prevent further environmental damage.

In What Circumstances?

Work carried out on land has caused or is likely to cause environmental damage, being damage to the physical environment that is caused by:

- a) drainage; or
- b) drainage works; or
- c) obstructing a natural watercourse other than by work constructed or used under a license granted under Part 2 of the Water Act 1912,

not being environmental damage arising from premises, works or equipment the subject of an approval or licence issued under the Protection Of the Environment Operations Act 1997 or the subject of a notice or direction issued by the regulatory authority under that Act.

To Whom?

Owner or occupier of land

Criteria

When determining whether a Notice of Proposed Order or Order is to be given, the following criteria are to be taken into consideration:

Physical environmental damage must be as a result of the flow of water over any land, discharged from the following sources:

- a) Drainage, being a drain or system of drains, whether artificial or natural, which are designed for the carrying of water other than sewerage and which includes a natural water course, or;
- b) Drainage works, being any part of the on-site process involved in the construction of a drain or drainage system and which includes, but not limited to site excavation, materials, compiling and any associated buildings works, or;
- c) Obstruction of a natural water course, being the carrying out of building works or the deposition of any material in such a position as to block or restrict the flow of water within or to redirect the flow of water away from a natural water course.

Order No.12 – Control surface water

To Do What?

To do such things as are necessary to control the flow of surface water across land.

In What Circumstances?

Other land or a building on the land or other land is being damaged or is likely to be damaged.

To Whom?

Owner or occupier of land

Criteria

When determining whether a Notice of Proposed Order or Order is to be given, the following criteria are to be taken into consideration:

- a) Erosion of land is occurring from the flow of surface water.
- b) Physical damage to a building is or has occurred or there is sufficient evidence to suggest that it is likely to occur.
- c) Surface water flows across the land boundary onto other land.

Situations where this Order may apply include, but are not limited to:

- a) Water from defective guttering, down pipes or drainage (including underground drainage pipes).
- b) Water from rooves not fitted with guttering.
- c) Emptying or backwashing swimming pools.
- d) Surface water that has been purposely redirected away from its natural direction of flow towards other land.

Criteria Does Not Include:

- a) Stormwater runoff which is NOT redirected in any manner (i.e. natural surface flow) and follows existing natural land contours.
- b) Surface water runoff occurring in periods of exceptional heavy rain.
- c) Surface water flowing down existing hard surface areas such as driveways, tennis courts, concrete slab or paved areas.
- d) Discharges from defective or blocked private stormwater easements.
- e) Overflows from absorption pits where contours of land and lack of access prevent direct connection of a building's stormwater drainage system to Council's Stormwater Drainage System.
- f) Runoff from any building or development work that is the subject of a Development Consent and has been constructed in accordance with that consent.
- g) Any circumstance in which the flow of surface water across land is capable of being regulated by the Environmental Protection Authority constitutes a circumstance where an order No 12 cannot be made.

Order No.15 – Not conduct an activity

To Do What?

Not to conduct, or to cease conducting, an activity on premises (whether or not the activity is approved under this Act).

In What Circumstances?

The activity constitutes or is likely to constitute:

- a) a life threatening hazard; or
- b) a threat to public health or public safety

and is not regulated or controlled under any other Act by a public authority.

To Whom?

Any persons apparently engaged in promoting, conducting or carrying out the activity.

Criteria

When determining whether a Notice of Proposed Order or Order is to be given, the following criteria are to be taken into consideration.

- a) The activity being carried out is causing or is likely to cause a life threatening hazard or a threat to public health or public safety to any person whether on private or public land.

Situations where this Order may apply include, but are not limited to:

- a) Use of a defective septic tank or a septic closet on premises after the date specified (in an Order No 24 served on the owner or occupier of the premises) being the date by which the premises were required to be connected with a sewerage system.
- b) Construction work on a septic tank or a septic closet on premises after the date specified (in an Order No 24 served on the owner or occupier of the premises) being the date by which the premises were required to be connected with a sewerage system

Criteria Does Not Include:

- a) Any activity that is covered by any other Act or Regulation.
- b) Any activity that is controlled by another authority

Order No.16 – Cease use or evacuate premises

To Do What?

To cease the use of premises or to evacuate premises.

In What Circumstances?

A person to whom Order No. 15 is given has failed to comply with the Order.

To Whom?

The person to whom Order No. 15 is given.

Criteria

No additional criteria.

Order No.17 – Leave or not enter premises

To Do What?

To leave premises or not to enter premises.

In What Circumstances?

A person to whom Order No. 15 is given has failed to comply with the Order.

To Whom?

Any person

Criteria

No additional criteria.

Order No.18 - Animals

To Do What?

Not to keep birds or animals on premises, other than of such kinds, in such numbers or in such manner as specified in the order.

In What Circumstances?

Birds or animals kept on premises are:

- a) in the case of any premises (whether or not in a catchment district) of an inappropriate kind or number or are kept inappropriately;

To Whom?

Occupier of premises.

Criteria

NOTE : There are no restrictions on the number of birds and animals that can be kept in the Shire in normal circumstances. Limits and standards may be applied when:

- A legitimate problem has been identified relating to the numbers and/or types of birds or animals kept upon a particular premise.
- There is a detrimental impact on the health, amenity and safety of others.
- Voluntary rectification of the problem does not occur, hence an order is required under the provisions of Section 124 of the Local Government Act 1993 to address the problems that have arisen.

Also see Part 5 of Schedule 2, "Standards for Keeping Birds and Animals", under the Local Government (General) Regulation 2005.

When determining whether a Notice of Proposed Order or Order is to be given, the following criteria are to be taken into consideration:

- a) Continuing offensive noise at inappropriate times.
- b) Continuing offensive odours.
- c) Vermin infestation through poor cleaning.
- d) Addressing nuisances, health or safety threats.
- e) Actual and potential impacts on neighbours or the public.
- f) The number and type of bird(s) or animal(s) being kept.
- g) The conditions in which the animals are being kept.

Note: Where the keeping of birds or animals on premises is capable of being regulated by the Environment Protection Authority, Council is excluded from making Order No. 18.

Criteria Does Not include:

- a) The feeding of wild or native birds and/or animals;

- c) Damage caused by wild or native birds or animals;
- d) The trapping of any wild or native birds or animals;
- e) The control of or treatment of termites on private or public land;

Order No. 19 – Tennis court

To Do What?

To use or not to use a tennis court as specified.

In What Circumstances?

Actual or likely annoyance or threat to the safety of neighbours or users of a public place.

To Whom?

Occupier of land

Criteria

When determining whether a Notice of Proposed Order or Order is to be given, the following criteria are to be taken into consideration:

- a) Tennis courts are not to be used after sundown unless otherwise approved by Development Consent.
- b) Tennis courts on private property shall not be used for commercial purposes without Development Consent being issued, i.e. for hire to non residents of the property.

Order No. 20 - Food

To Do What?

To do such things as are specified in the Order to put premises, vehicles or articles used for the manufacture, preparation, storage, sale, transportation or other handling or use of or in relation to food into a clean or sanitary condition.

In What Circumstances?

The premises, vehicle or article, is not in a clean or sanitary condition.

To Whom?

Owner or occupier of premises or owner or operator of vehicle or article.

Criteria

When determining whether a Notice of Proposed Order or Order is to be given, the following criteria are to be taken into consideration:

- a) The premises including any fixtures, fittings, utensils and equipment has not been adequately cleaned and there is accumulations of dirt, dust, grease, oil, food matter or any other matter that could contaminate or likely contaminate any food stuffs present on the premises

- b) The food handling procedures and hygiene standards of operators create such unsanitary conditions that will cause contamination or is likely to cause contamination of any food stuffs present on the premises.
- c) There is “non compliance with the following standards that cause the premises to be in an unclean or unsanitary condition as described above:
 - I. The Australia New Zealand Food Standards Code.
 - II. Australian Standard 1668.2 The Use of Ventilation and Air Conditioning in Buildings – Ventilation Design for Indoor Air Contaminant Control.
- d) In the case of water carting vehicles (See Clause 93 of the Local Government (General) Regulation 2005):
 - I. Whether a vessel used on a vehicle to cart water has an aperture that is large enough to enable easy inspection of the interior or thorough cleaning of the interior.
 - II. Whether the cover of any such aperture is of a kind that is able to be kept thoroughly clean.

Order No. 21 – Safety and health

To Do What?

To do or refrain from doing such things as are specified in the Order to ensure that land is, or premises are, placed or kept in a safe or healthy condition.

In What Circumstances?

The land or premises are not in a safe or healthy condition.

To Whom?

Owner or occupier of land or premises.

Criteria

Land or premises would be considered not to be in a safe and or healthy condition if the safety or the health of the owner or occupier of the land or premises, or the community, is detrimentally affected. Criteria and actions that need to be considered include, but is not limited to:

- a) The abatement of dampness in walls and ceilings in any property;
- b) The repair of leaky roofs and renewal or repair of defective guttering and down piping [where it causes health & safety issues and not damage - See Order 12];
- c) Provision of adequate wholesome water supply;
- d) The renewal of broken window glass and sash cords to render windows capable of being opened top and bottom;
- e) The removal of defective floor timbers and stair treads and replacement with sound material;
- f) The renewal or repair of waste pipes; and sanitary fittings and flush pipe to water closet pans;
- g) Clearing of choked sewerage service pipes;
- h) Repair of defective septic tanks, pipes and absorption pits;
- i) The removal of the following accumulations which are likely to afford harbourage for vermin or otherwise pose a threat to health and safety to any person:

- I. disused and/or second hand building materials or household fixtures and fittings;
 - II. dilapidated and/or abandoned motor vehicle or ancillary parts and accessories or machinery;
 - III. dilapidated and/or abandoned boats, watercraft, trailers or caravans;
 - IV. disused and/or second hand containers, bottles, scrap metal, waste paper, rags, rubbish or other scrap materials; and
 - V. tree trunks, tree stumps, organic material, vegetation or firewood;
- j) Provision of suitable facilities for toilet, kitchen sink, bathing and for washing of clothes hot and cold water provided.
 - k) Provision of suitable cooking facilities;
 - l) The control of animal enclosures in so far as their operational aspects in relation to environmental health is concerned.
 - m) The treatment of an untreated swimming pools or excavation where the condition of the water within is or is likely to be breeding mosquitoes.
 - n) The boarding up or fencing off of a dilapidated building to prevent unauthorised access where there is a safety issue from injury or fire.
 - o) Cleaning of garbage containers.
 - p) Potential for collapse of a structure, or part thereof, such as a wall, fence or other building.
 - q) Disconnection of an electric fence from its energiser or otherwise render it inoperable.

Criteria Does Not Include:

Defective retaining walls, buildings or structures that are dilapidated or appear defective if they:

- a) are located on private property and
- b) would not impact upon any adjoining public land if they were to collapse and
- c) would not pose a threat to health and safety of persons on the adjoining public land in any way.

Where the condition of land or premises in respect of health or safety is capable of being regulated by the Environment Protection Authority, Council is excluded from making Order No. 21.

Order No. 22 – Waste

To Do What?

To store, treat, process, collect, remove, dispose of or destroy waste which is on land or premises in the manner specified in the order provided that it is not inconstant with the regulations made under the Protection Of the Environment Operations Act 1997

In What Circumstances?

Waste is present or generated on the land or premises and is not dealt with satisfactorily and is not regulated or controlled by, or subject to, a licence issued under the Protection Of the Environment Operations Act 1997.

To Whom?

Owner or occupier of land or premises, owner of or person responsible for the waste or for any receptacle or container in which the waste is contained.

Criteria

When determining whether a Notice of Proposed Order or Order is to be given, the following criteria are to be taken into consideration:

- a) Waste is being placed on the roadway for collection by Council not in the approved impervious receptacles with close-fitting lids that are provided by Council.
- b) Where waste is present on land or premises and is not being properly stored, collected or removed satisfactorily from those premises.
- c) Defective site absorption septic tank system.
- d) Disposal of human waste on site without an approved method of waste disposal.

Order No. 24 – Connect to sewerage system

To Do What?

To connect premises with a sewerage system by a specified date.

In What Circumstances?

The premises are situated within 75 metres of a sewer of the Council.

To Whom?

Owner or occupier of premises.

Criteria

When determining whether a Notice of Proposed Order or Order is to be given, the following criteria are to be taken into consideration:

- a) The distance from the premises to the connection point of the sewer must be not further than 75 metres and:
 - I. have legal access using an easement for sewerage services over any adjoining premises to the sewer connection point, or
 - II. has access to the sewer located within an adjoining Council road reserve and
 - III. connection to the sewer can only be made via a junction point established by Council.
- b) Whether the existing sewage management facility is so defective to be a threat to public health and/or is or likely to have a detrimental impact on the environment.

Order No. 25 – Human waste

To Do What?

Not to use or permit the use of a human waste storage facility on premises after a specified date.

In What Circumstances?

It is necessary for the purpose of protecting public health.

To Whom?

Owner or occupier of premises

Criteria

When determining whether a Notice of Proposed Order or Order is to be given, the following criteria are to be taken into consideration.

- a) The human waste storage facility is so defective or poorly designed so as to permit human waste to discharge or overflow from the storage facility onto the adjacent ground or floor area and in such a manner to be a danger to the health of the public.

Criteria Does Not Include:

Where the use of human waste storage facilities is capable of being regulated by the Environment Protection Authority, Council is excluded from making an Order No. 25.

Order No. 27 – Public place, remove object or matter

To Do What?

To remove an object or matter from a public place or prevent any object or matter being deposited there.

In What Circumstances?

The object or matter:

- a) Is causing or is likely to cause an obstruction or encroachment of or/on the public place and the obstruction or encroachment is not authorised by or under any Act, or
- b) Is causing or is likely to cause danger, annoyance, or inconvenience to the public.

To Whom?

Person causing obstruction or encroachment or owner or occupier of land from which the object or matter is likely to emanate.

Criteria

When determining whether a Notice of Proposed Order or Order is to be given, the following criteria are to be taken into consideration:

- a) Definition of Encroachment:
- b) Definition of Obstruction:
- c) Definition of object or matter: Any article, item or thing which is visible and tangible and includes but is not limited to:
 - I. Advertising sign, advertisement generally;
 - II. Motor vehicles or motor vehicles parts;
 - III. Caravans or caravan parts;
 - IV. Trailers/boats or trailer/boat parts;
 - V. Machinery, equipment and appliances;
 - VI. Second hand materials including building materials;
 - VII. Demolition materials;
 - VIII. Scrap materials;
 - IX. Sand, soil rock, blue metal and any other material derived from any construction or dredging process;
 - X. Any organic or vegetative material;
 - XI. Any industrial or commercial waste product;
 - XII. Any household fixtures, rubbish or waste;
 - XIII. Second hand containers, bottles, scrap metal, waste paper, rags, or rubbish;
 - XIV. Any recycled or composted material;

Criteria Does Not Include:

This criteria does not include the placing of articles on a public place during a designated period of a Council clean up provided these articles do not breach conditions (a) and (b) above.

Order No. 28 – Public place, prevent or repair damage

To Do What?

To take whatever steps are necessary to prevent damage to a public place and repair damage to a public place.

In What Circumstances?

There is actual or likely damage:

- a) By excavation or removal of material from or adjacent to the public place; or
- b) By a work or structure; or
- c) By surface drainage or irrigation spray.

To Whom?

- a) Person responsible for the excavation or the removal of the material.
- b) Owner or person entitled to the benefit of the work or structure.
- c) Owner or occupier of land from which the surface drainage flows or from which spray emanates.

Criteria

When determining whether a Notice of Proposed Order or Order is to be given, the following criteria are to be taken into consideration:

- a) Whether the activity is associated with any approval issued by Council.
- b) If the activity is related to an approval issued by Council, whether the conditions of the approval being complied with.

Order No. 29 – Public place, alter or repair work or structure

To Do What?

To alter or repair a work or structure on, over or under a public place.

In What Circumstances?

It is in the public interest to do so.

To Whom?

Owner of the work or structure.

Criteria

When determining whether a Notice of Proposed Order or Order is to be given, the following criteria are to be taken into consideration.

- a) To alter or repair structures on, over, or under the public way not in accordance with approvals or considered unsafe or dangerous.
- b) Repairs required to private services within a public place such as, but not limited to, sewer services and roof water / storm water pipes not covered by lease agreements.
- c) Driveway crossings which are not being maintained in a safe condition.
- d) Shop awnings which are not being maintained in a safe or slightly condition.
- e) Maintenance of underground pipes within a public place.

Order No.30 – Comply with an approval

To Do What?

To comply with an approval.

In What Circumstances?

The approval is not being complied with.

To Whom?

Person entitled to act on the approval or person acting otherwise than in compliance with the approval.

Criteria

When determining whether a Notice of Proposed Order or Order is to be given, the following criteria are to be taken into consideration:

- a) An approval granted by Council has not been complied with or
- b) Conditions of an approval granted by Council have not been complied with.

Order under Section 125 of the Local Government Act 1993

To Do What?

To abate a public nuisance or order a person responsible for a public nuisance to abate it.

In What Circumstances?

Where a nuisance consists of interference with the enjoyment of public rights. A nuisance is “public” if it materially affects the reasonable comfort and convenience of a sufficient class of people to constitute the public or a section of the public.

To Whom?

The person(s) responsible for causing a public nuisance.

Criteria

When determining whether a Notice of Proposed Order or Order is to be given, the following criteria are to be taken into consideration:

- a) The source of the nuisance need not be located on, or in, a public place.
- b) The impact of the nuisance must affect the general public and not a localised group.

Example 1 - Lighting from a private premises impacting upon motor vehicle drivers on a public road.

Example 2 – Any wrongful or negligent act or omission in a public road that interferes with the full, safe and convenient use by the public of their right of passage is a public nuisance.



PART 3 – OTHER MATTERS RELATING TO ORDERS

7. What must council consider before giving an order?

Council must ensure that:

- the type and circumstances of the order and the person on whom the order will be served are described in the Table to Section 124 of the Act; or
- the activity constitutes a public nuisance under Section 125 of the Act; and
- the relevant provisions of the Act, Regulations, Local Approvals Policy and any additional criteria adopted in a Local Orders Policy have been considered (LG Act s131).

8. What must be done before an order is served?

Council must issue a notice of intention to serve the order which provides the following information (Section 132):

- the name of the person for whom the order is intended;
- the terms of the proposed order;
- how long the person will have to comply with the proposed order;
- an opportunity for the person to make representations to council to explain why a proposed order should not be given or that the terms of, or period for compliance are, unreasonable;
- how, when and to whom representations can be made (LG Act s132 (3));
- right of appeal to the Land and Environment Court and time period within which an appeal may be made (LG Act s138).

9. Who can make representations?

The person on whom the proposed order is to be served (or their barrister, solicitor or agent) can make representations (LG Act s133).

10. How should representations be made and considered?

Representations can be made in writing or orally to the council, a nominated committee or council officer. Council must hear and consider any representations made regarding proposed orders (LG Act s134). Consideration must be given to the special circumstances of any residents if order No 15A is proposed to be served.

11. What does Council do after hearing representations?

The council, nominated committee or officer can proceed with the proposed order, make modifications to the order or not give the order (LG Act s135 (1)).

If modifications are made to the order as a result of the representations a further notice of intention is **not** required (LG Act s135 (2)).

12. Are there any exemptions to these procedures?

The procedures normally observed before giving orders do not apply to orders given, and expressed to be given, in an emergency and in the case of Order No 15 when the cessation of an activity is ordered because it constitutes a life threatening hazard, a threat to public health or public safety and is not regulated under any other Act or by a public authority (LG Act s129 (2)).

13. What information should the order contain?

The order should contain:

- Reasons for the order (LG Act s136 (1)) except in urgent cases when reasons must be given the next working day (LG Act s36 (3)).
- The period in which the terms of the order are to be complied with (LG Act s137 (1)).
- Notice of the right to appeal against the order or part of the order (LG Act s138 (a)).
- The time period within which an appeal can be made (s138 (b) *including both periods where it is a "particulars of work" order*).
- Any relevant provisions of the Act, Regulations and Local Approvals Policy and Local Orders Policy not complied with (Local Government (General) Regulation 2005 cl 99(a)).
- Notice that it is an offence not to comply with an order and the maximum penalty (Local Government (General) Regulation 2005 cl. 99(b)).
- Notice that if the order is not complied with council can undertake the work and recover costs (Local Government (General) Regulation 2005 cl. 99(c)).

In addition an order may specify the standard a premises is to meet, the nature of work that would meet the specified standard and the time period (not exceeding 3 months) *within which particulars of work must be submitted* (LG Act s139).

14. How long does Council have to consider whether the proposed works meet the standards specified in an order?

Council has 28 days in which to consider the proposed works and can:

- (1) accept the proposed works without modification and order the completion of the works immediately;
- (2) accept the proposed works with modifications;
- (3) reject the proposed works

If council is still not satisfied with the proposed works, then it must within 3 months prepare a schedule of works and order the person to carry out those works (LG Act s141 (3)). An order under section 141 forms part of the order under section 124 to which it relates.

15. Can Council recover any expenses involved in this process?

Yes, Council can recover any expenses in preparing particulars of work to be completed (LG Act s141 (5)).

16. How do orders affect heritage items?

Council must first consider the impact of the order on the heritage item and must notify the Heritage Council of its intention to serve an order if the item is listed in the Register of the National Estate or included as an order under the Heritage Act 1977 (s142 (1) (2) (3)).

17. How is an order given and when does it take effect?

A copy of the order can be served by a council officer or posted to the person to whom the order is addressed (LG Act s144). It takes effect from the time it is served or a later time if specified in the order (LG Act s144).

18. Does Council have the power to give an order under another act?

Council is able to give orders under other Acts, provided that an authority has been given. For example council may serve an order under the Environmental Planning and Assessment Act 1979, the Companion Animals Act 1998, Protection of the Environment Operations Act 1997, the Food Act 2003. The relevant provisions of the respective acts will apply in such circumstances.

19. What happens when a person fails to comply with an order?

The person is guilty of an offence under the LG Act for failure to comply with an order (LG Act s628). The maximum penalties that apply to particular orders are as follows:

- a) Orders Nos 1, 3,5 and 7 to 12 - 50 penalty units for an individual and 100 penalty units for a corporation
- b) Orders Nos 15,16 and 17 - 100 penalty units for an individual and 200 penalty units for a corporation
- c) Orders Nos 18 to 25 and 27 to 29 – 20 penalty units.
- d) Order No 30 - The same penalty as the penalty imposed for carrying out the activity the subject of the approval otherwise than in accordance with the approval.
- e) Order under Section 125 – 20 penalty units.

In June 2006 one penalty unit was equal to \$110 (See Section 17 of the Crimes (Sentencing Procedure) Act 1999).

20. Is an approval necessary for work to be undertaken?

No, a person who carries out work in compliance with an order does not have to make an application for approval of the work. (LG Act s138A).

21. Must an occupier of land permit an owner to carry out work?

Yes, the occupier must within 2 days of the order being served allow the owner to do the work (LG Act s148 (1) (2)). However if the occupier does not permit the owner to do work the owner is not considered guilty of an offence for failure to comply (LG Act s149 (3)).

22. Can Council carry out the works?

Yes, if a person does not comply with the terms of an order then council can carry out the works and recover the costs (LG Act s141 (5) and s678).

23. What rights of appeal does a person have against an order or part of an order?

A person may appeal to the Land and Environment Court within 28 days of the order being served (LG Act s180 and Land and Environment Court Rules 1980 s17).

24. Does the appeal prevent the order from operating?

No, the order operates while the appeal is being heard in the Land and Environment Court.

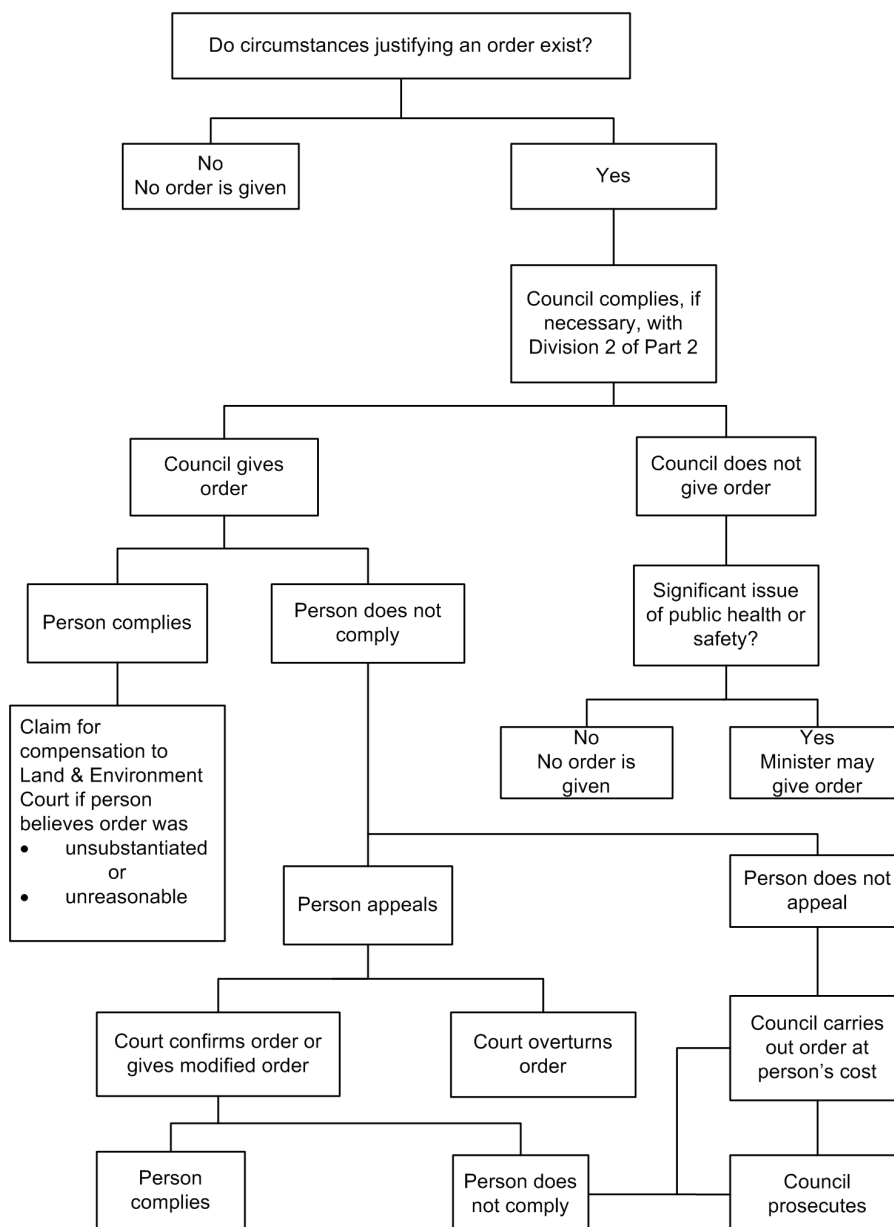
25. Is a building owner entitled to any compensation from Council for expenses involved in complying with an order?

The only time a building owner is entitled to compensation is if Council orders the demolition of a building (Order No 1) or repair or make structural alterations to a building (Order No 3) that is located in a proclaimed catchment district which causes or is likely to cause the pollution of a water supply (LG Act s128).

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26. Overview of legal process to issue an order

The diagram below provides an overview of the process followed when a Council is considering issuing an order, and has been copied from Part 2 of the Local Government Act 1993.



27. Dictionary

The dictionary below represents a partial extract from the dictionary of the Local Government Act 1993 and should be read in conjunction with this Local Approvals Policy.

act means the Local Government Act 1993.

council means the council of an area, and includes an administrator.

dwelling, in Division 1 of Part 8 of Chapter 15, means a building or part of a building used as a place of dwelling.

human waste means human faeces and urine.

human waste storage facility means a device for holding or disposing of human waste, including a cesspit, septic tank, septic closet, water closet, chemical closet, humus closet and combustion closet.

public road means a road which the public are entitled to use.

road includes:

- a) highway, street, lane, pathway, footpath, cycleway, thoroughfare, bridge, culvert, causeway, road-ferry, ford, crossing, by-pass and trackway, whether temporary or permanent, and
- b) any part of a road and any part of any thing referred to in paragraph (a), and
- c) any thing forming part of a road or any thing forming part of any thing referred to in paragraph (a).

sewerage work means the construction, alteration, extension, disconnection, removal, ventilation, flushing, cleansing, maintenance, repair, renewal or clearing of any sewerage service pipes or fittings or fixtures communicating or intended to communicate, directly or indirectly, with:

- a) a septic tank, an effluent or a sullage disposal system, or
- b) any sewer of a council,

and includes work of sanitary plumbing and work of house drainage.

waste means:

- a) effluent, being any matter or thing, whether solid or liquid or a combination of solids and liquids, which is of a kind that may be removed from a human waste storage facility, sullage pit or grease trap, or from any holding tank or other container forming part of or used in connection with a human waste storage facility, sullage pit or grease trap, or
- b) trade waste, being any matter or thing, whether solid, gaseous or liquid or a combination of solids, gases and liquids (or any of them), which is of a kind that comprises refuse from any industrial, chemical, trade or business process or operation, including any building or demolition work, or
- c) garbage, being all refuse other than trade waste and effluent,

and includes any other substance defined as waste for the purposes of the Protection of the Environment Operations Act 1997, and a substance is not precluded from being waste merely because it is capable of being refined or recycled.

water supply work means the construction, alteration, extension, disconnection, removal, flushing, cleansing, maintenance, repair, renewal or clearing of any pipes or fittings of any water service communicating or intended to communicate, directly or indirectly, with any water main of a council, but does not include changing a washer.

END.