



Local Orders Policy No 21

Premises or Land not in a Safe or Healthy Condition

Section 159 Local Government Act 1993

Adopted 16 May 2017

1. PURPOSE

This Local Order Policy has been written in accordance with s159 of the Local Government Act 1993. Local Order Policy No 21 deals specifically with premises or land which is not in a safe and healthy condition. Under this provision an Order can be issued to require an owner or occupier of land, to do, or refrain from doing, certain things to ensure the land or premises are placed or kept in a safe or healthy condition.

2. SCOPE

The Local Orders Policy shall apply to:

- a) All premises and all areas associated with those premises
- b) All land within the following planning zones:
 - R1 General Residential and R5 Large Lot Residential zones in West Wyalong and Wyalong
 - RU5 Village and R5 Large Lot Residential zones in Barmedman, Mirrool, Weethalle, Tallimba and Ungarie

Except where otherwise provided or indicated, the Director Community, Corporate and Development Services shall be responsible for the enforcement of the provisions of this Policy.

3. OBJECTIVE

This Local Orders Policy has been prepared to specify the criteria that Council will consider when determining whether or not safe and healthy conditions exist and whether the issue of an Order is warranted.

The policy aims to:

- Ensure consistency and fairness in the manner in which Council deals with issuing orders;
- Make the Council's policies and requirements for orders readily accessible and understandable to the public;
- Establish a system which can effectively resolve disputes and conflicts as they arise
- Provide a framework which will allow Council to prioritise workload.

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

Note: Automatic revocation of the Policy is provided for by section 165(4) of the Local Government Act

Note: Section 163 of the Local Government Act requires that the policy is void if it is inconsistent with the Act or the regulations.

4. CIRCUMSTANCE

Council may serve an order when the land or premises are not in a safe or healthy condition.

5. CRITERIA

The circumstance of unsafe or unhealthy land may be considered to exist when an authorised Council officer observes any or all of the following:

5.1 Overgrown Vegetation

Land may be considered to be not in a safe or healthy condition when it is located in a built up urban area and vegetation on the land:

- Is harbourage for vermin (evidence can include sightings, faeces, nests, runs, eggs etc); or
- Is likely to be harbourage for vermin (such vegetation should be consistently thick to an average height of 300mm covering vacant land or the unbuilt portion of land). It does not follow from this that an uncleared or regenerated bush block comprising of mainly indigenous vegetation would be considered likely to be harbourage for vermin); or
- Is determined by the relevant fire authority as posing a high fire hazard (Council will not consider vegetation to be a fire hazard if it has been determined not to be a fire hazard by the NSW Fire Service or the Rural Fire Service).

Note: For the purpose of this order:

Overgrown vegetation does not include any vegetation that is protected by either the Threatened Species Conservation Act 1995 and does not include a commercial crop.

Vermin does not include any native fauna.

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5.2 Accumulation of Materials, Refuse, Manure, or Other Hazardous Items

Land or premises may be considered not in a safe or healthy condition when materials accumulated thereon or in:

- Provide harbourage for vermin (evidence may include faeces, sightings, nests, runs, eggs etc); or
- Are likely to attract, or provide harbourage for vermin. (Council will not consider inert items that are stacked in a safe, tidy manner, at least 300 mm off the ground and at least 600 mm from a boundary to allow adequate mowing around the items, as being likely to attract, or provide harbourage to vermin); or
- Aid the breeding of flies, mosquitoes, or other potentially disease carrying insects or animals; or

- Are likely to be releasing gas/dust/vapour/liquid or other emission which could be considered harmful to humans and/or the environment; or
- Are suspected to contain asbestos and are being handled (including, but not limited to, cutting, sanding, breaking, removing), or stored in a manner inconsistent with NSW SafeWork NSW and/or the Environmental Protection Authority guidelines and is considered likely to lead to the release of fibres and/or dust to present a threat to health (material suspected as being asbestos is assumed to be asbestos, unless the recipient, or proposed recipient, of an Order can prove otherwise); or
- The material is considered to be hazardous.

Note: For the purpose of this order:

Vermin does not include any native fauna.

5.3 Breeding and/or Infestation of Disease Vectors or Noxious Pests

Land or premises may be considered not to be in a safe or healthy condition when:

- They are infested with vermin, flies, mosquitoes or other insects or animals that are recognised as potentially carrying human diseases; or
- Conditions are aiding the breeding of vermin, flies, mosquitoes or other insects or animals that are recognised as potentially carrying human diseases; or
- Noxious pests are breeding on or infesting a premises.

Note: For the purpose of this order:

Vermin does not include any native fauna.

Noxious pests include European wasps, fire ants or any other pest determined by the Director Community, Corporate and Development Services (in consultation with the Department of Primary Industry or any other relevant Government authority), but does not include any native fauna.

5.4 Inappropriate Handling of Sewage

Land or premise may be considered to be in a safe or health condition when:

- The plumbing on the premises is failing, leading to the discharge of sewage/inappropriate handling of sewage; or
- The premises is currently serviced by an onsite sewage management system (OSSM) and that system is failing to meet the requirements of:
 - The conditions of consent/approval in any approval to install or operate the OSSM, or
 - The requirements of the Environmental Health Protection Guidelines: Onsite Sewage Management for Single Households.

Note: For the purpose of this order:

Sewage is taken to be either grey water or black water.

5.5 Unsafe or Unhealthy Conditions in a Building or Structure

Land or premises may be considered not to be in a safe or healthy condition when:

- A building contravenes the structural or health and amenity provisions of the Building Code of Australia to an extent which causes it to be unsafe or unhealthy; or
- A wall or structure is considered dangerous by an authorised Council officer;
- Overcrowded sleeping conditions prevail (as determined by the Public Health (General Regulation 2002); or
- A designated drinking water supply is contaminated or is unfit for human consumption;
- A food premises contravenes health and safety requirements of Chapter 3 of the Australia New Zealand Food Standards Code.

Note: Building issues for a trivial nature will not be enforced through the Local Government Act orders process. Conditions must pose a danger to public or tenants. Allegations of effects of unhealthy conditions may need to be verified by a Doctor's Report.

5.6 Other

Any other situation which is deemed by the Director Community, Corporate and Development Services as being likely to pose an immediate danger to health or safety of the greater public.

6. REMEDIAL ACTION

An order may specify certain works that need to be undertaken in order to place a property in a safe and healthy condition. These works may include, but are not limited to, any of the following:

- Remove, cut, slash, mow, prune, trim, or thin out overgrown vegetation on the property;
- Removal of waste material, and any unwanted material, and dispose of at a suitably licensed waste facility;
- Store materials in a safe and tidy manner at least 300mm above ground level and 600mm from boundary fences to allow mowing to be undertaken;
- Eradicate disease vectors or noxious pests that are harbouring on the property;
- Remove items or material which are aiding the harbourage and/or breeding of disease vectors or noxious pests.
- Engage a pest controller to manage disease vectors or noxious pests that may be present on the site, and remove the potential for harbourage;
- Clean the premises, or aspects of the premises, to place it in a healthy condition.

Note: Remedial action will not cover any vegetation that is protected by either the Native Vegetation Act 2003, Threatened Species Conservation Act 1995 or Council's Tree Preservation Order.

7. NOTICE OF INTENT

Prior to the issue of an order, Council must give the owner or occupier of the land or premises a notice of intent to give an order. The need for a notice of intent to give an order does not apply in emergency situations (section 129 of the Local Government Act 1993).

8. MAKING REPRESENTATIONS

Any person in receipt of a notice of intent may make written representations on the proposed order within 14 days. This does not apply in emergency situations (section 129 Local Government Act 1993).

9. HEARING AND CONSIDERATION OF REPRESENTATIONS

Depending on the circumstances, the Director Community, Corporate and Development Services, or any other delegated officer, shall be the officer to determine the representations in respect of the issue of an order. This does not apply in emergency situations (section 129 Local Government Act 1993).

10. ISSUING OF AN ORDER

Should it be necessary to issue an order, a reasonable period will be given so that the terms of the order can be complied with.

The order will be issued by the Director Community, Corporate and Development Services or any other delegated officer, on the owner or occupier of the land or premises.

11. RIGHT OF APPEAL

The person affected by the order has the right of appeal to the Land and Environment Court within 28 days after the service of the order on the person.

12. PENALTY

Any person not complying with an order is guilty of an offence in accordance with the Local Government Act 1993, and may be subject to prosecution or a fine.

A penalty notice (on the spot fine) may be issued for failure to comply with the terms of Order No 21. After issuing a penalty notice, Council may proceed to issue a new order for an ongoing offence.

If a person fails to comply with the terms of an Order, Council may do such things as necessary or convenient to give effects to the terms of the Order, in accordance with s678 of the Local Government Act 1993.