

ORDINARY COUNCIL MEETING

WEDNESDAY, 25 NOVEMBER 2020

ATTACHMENT BOOKLET 4

Attachment No. 5 Make Obsolete – Expenditure Authority for the Mayor
and General Manager – Policy 1.050

Attachment No. 6 Update – Local Orders for the Keeping of Animals in
Urban Areas of Tenterfield Shire – Policy 3.120

Attachment No. 7 Update – Enforcement Policy for Unlawful Activities –
Policy 1.051

Attachment No. 8 Update – Local Orders – Policy 3.123

TENTERFIELD SHIRE COUNCIL

POLICY STATEMENT

HEADING:

Expenditure Authority for the Mayor and General Manager

**MEETING ADOPTED
AND RESOLUTION NO.:**

**23 August 2017
168/17**

**MEETING ADOPTED
AND RESOLUTION NO.:**

23 March, 2000	200/00
21 October, 2004	521/04
26 September 2012	387/12
22 April 2015	96/15

OBSOLETE

Introduction:

This policy is an authority for the Mayor and General Manager to incur expenditure up to an amount of \$150,000 in cases where works are urgent.

Policy:

That the Mayor and General Manager be authorised to incur urgent expenditure (defined below) to an amount of \$150,000 provided full details are reported by the General Manager to the next Ordinary Meeting of Council for confirmation.

Remedial action requiring urgent expenditure is authorised in cases of:-

- Bushfire
- Flood
- Severe Storm
- Natural Disaster
- Environmental / pollution / contamination
- Infrastructure Collapse (e.g. bridge collapse, dam bursting, water contamination)
- Any situation threatening the immediate safety of human life

or

- Circumstances are such that prompt decisions are required.



LOCAL ORDERS FOR THE KEEPING OF ANIMALS IN URBAN AREAS OF TENTERFIELD SHIRE

Summary:

This policy seeks to provide clear direction to the Tenterfield Shire Community of Councils responsibilities and regulatory powers concerning the keeping of animals in the Tenterfield Shire area and the process which Council uses to determine when to enforce the controls within this policy.

As such, it is not the intent of the Council nor the policy to enforce controls within this policy in the first instance but to work with owners of domestic animals to ensure that the keeping of domestic animals does not have adverse impact on adjoining properties.

Policy Number	3.120
File Number	
Document version	V5.0
Adoption Date	To Be Confirmed – 7 Jan 2020 Placed on exhibition from 25 November 2020 to 7 January 2021 proposed effective date 7 January 2021
Approved By	Council
Endorsed By	Council
Minute Number	(Insert)
Consultation Period	(Insert dates) – 42 days unless statutory period – Part of the Local Orders Policy - Policy No 3.123
Review Due Date	January 2024 – 3 years
Department	The Office of the Chief Corporate
Policy Custodian	Manager Open Space, Regulatory & Utilities
Superseded Documents	23 August 2017 - 168/17 28 September 2011 - 467/11 24 October 2012 - 445/12 25 March 2015 - 69/15
Related Legislation	<ul style="list-style-type: none">• Local Government Act 1993 Chapter 7, Sections 124 and 159;• The Companion Animals Act 1998;• The Protection of the Environment Operations Act, 1998;

Delegations of Authority

- The Impounding Act, 1993;
 - The Food Act, 2003 (prohibits animals to be kept where food is handled for sale and in certain food service areas, Guide Dogs are exempt).
-
- Chief Executive,
 - Chief Corporate Officer;
 - Open Spaces, Regulatory and Utilities Manager;
 - Planning & Development Services Manager;
 - Ranger.

1. Overview

This policy seeks to inform the Tenterfield community of Council's regulatory powers concerning the keeping of animals in the Tenterfield Shire area. This Policy, in conjunction with Council's Local Orders Policy 2015 aims to:

- a) Minimize the incidence of nuisance being caused to persons;
- b) Protect the welfare of companion and farm animals;
- c) Protect the welfare and habitat of wildlife;
- d) Minimize the disturbance of or damage to protected vegetation; and,
- e) Safeguard the environment.

It is well documented that the keeping of companion animals and/or pet animals is beneficial to the well-being of people. Nevertheless, on occasions, complaints are made to Council where animals of an inappropriate kind or number are being kept or where the animals and their accommodations are not being looked after properly.

It is not intended within this policy to completely regulate the manner in which animals should be kept. It is however necessary that this policy should inform the reasonable limits (both statutory and advisory) which apply concerning the maximum number of animals and the circumstances under which they may be kept on residential premises.

Responsible ownership is a very important component of nuisance control and this document also contains advice to the animal owner regarding their responsibilities to prevent a nuisance from occurring.

2. Policy Principles

This policy applies to animals kept for domestic purposes, as companion animals, pets or for hobby interests. This policy is not intended to replace or supersede the requirements of the Companion Animals Act 1998 or the Prevention of Cruelty to Animals Act 1979.

3. Policy Objectives

- To inform the community of the main statutory restrictions and acceptable limits which apply to the keeping of certain animals for domestic purposes.

- To give guidance and advice to persons enquiring as to the keeping of animals for domestic purposes.
- To establish local standards, acceptable to the community, for the keeping of animals.
- To publicly notify the circumstances that the Council will consider in determining whether to serve an Order under Section 124 of the Local Government Act, 1993 to prohibit restrict or in some other way, require things to be done regarding the keeping of animals. Furthermore, to act in accordance with Councils Local Orders Policy 2015.

4. Policy Statement

1. PRESCRIPTIVE REQUIREMENTS

- 1.1 The number of animals that may be kept at a premises should not exceed the number shown as appropriate to the kind of animal listed in the table included with this policy.
- 1.2 The type of animal that is suitable to be kept at any premises will be determined having regard for the size of the available yard area and the distance to the nearest dwelling or other prescribed building. Certain statutory requirements also apply as noted in the table.
- 1.3 ***YARD AREA means an appropriate pastured paddock area situated on urban residential land that is suitably fenced, has water available and feed, shelter and shade appropriate to the animals being kept at the premises.***
- 1.4 It should not be assumed that animals of all kinds may be kept on premises which are part of a multiple dwelling allotment. Where a dwelling is owned within Strata Plan it will be necessary for the rules of the Body Corporate to be examined for requirements relevant to the keeping of animals.
- 1.5 Animals should be kept in a manner which does not:
 - a) Contravene assessment criteria outlined in part 5 of Council's Local Orders Policy 2015;
 - b) Create unclean or unhealthy conditions for people or for the animals;
 - c) Attract or provide a harbourage for vermin;
 - d) Create offensive noise or odours;
 - e) Cause a drainage nuisance or dust nuisance;
 - f) Create waste disposal problems or pollution problems;
 - g) Create an unreasonable annoyance to neighbouring residents or fear for safety; or,
 - h) Cause nuisance due to proliferation of flies, lice, fleas or other insects.

- 1.6 Suitable shelter(s) should be provided for all animals. Certain kinds of animals are required to be kept in cages to prevent escape or attack by predators. Generally other animals are to be securely enclosed with adequate fencing to prevent escape. The containment of companion animals using electrical devices/containment systems must comply with the Prevention of Cruelty to Animals Act 1979 and Prevention of Cruelty to Animals (General) Regulation 2006."
- 1.7 Certain animal shelters should not be erected or located at a premises **without the prior approval of Council**. Please contact Council's Environmental and Community Services Department for further details.
- 1.8 Design Guidelines for the size, layout and construction of animal shelters are produced by the various animal welfare organizations and the Department of Primary Industries. These may be adopted from time to time as supplements to this policy.

2. COUNCIL'S POWERS TO CONTROL AND REGULATE THE KEEPING OF ANIMALS

- 2.1 Generally, Council's powers to control and regulate the keeping of animals is provided under Section 124 of the Local Government Act, 1993 and the Companion Animals Act 1998.
- 2.2 The Council may, in the appropriate circumstances, issue an Order to:
 - a) Prohibit the keeping of various kinds of animals;
 - b) Restrict the number of various kinds of animals to be kept at a premises; and/or,
 - c) Require that animals be kept in a specific manner.
- 2.3 The Council may also issue Orders requiring:
 - a) Demolition of animal shelters built without the prior approval of Council; and/or,
 - b) The occupier to do or refrain from doing such things as are specified so as to ensure that land or premises are placed or kept in a safe, tidy or healthy condition.
- 2.4 It is advised that Council can exercise further controls over animals under the following Acts.
 - a) The Companion Animals Act 1998;
 - b) The Protection of the Environment Operations, 1998;
 - c) The Impounding Act, 1993; and/or,
 - d) The Food Act, 2003 (prohibits animals to be kept where food is handled for sale and in certain food service areas, Guide Dogs are exempt).

3. GIVING OF ORDERS BY COUNCIL

3.1 The procedures for the issuing of Notices and Orders is outlined in Council's Local Orders Policy 2015. Generally, where a problem is identified with the keeping of animals and it cannot be resolved by consultation, the Council will proceed to issue a Notice of Intention to serve an Order. Normally a person will be given opportunity to make representations to Council prior to a formal Order being issued. In situations where urgency is required an emergency Order may be issued without prior notice.

4. TABLE OF REQUIREMENTS

4.1 The following table indicates the essential requirements and relevant considerations regarding the keeping of animals.

KIND OF ANIMAL	MAXIMUM NUMBER (Excludes Offspring to 3 months of age)	MINIMUM DISTANCE (from certain buildings) (See Note A)	APPLICABLE REGULATIONS AND OTHER ADVISORY MATTERS
Dogs	2		<p>Under the Companion Animals Act a companion animal must be microchipped from 12 weeks of age.</p> <p>A companion animal must be registered from 6 months of age.</p> <p>Dogs must be under effective control at all times.</p> <p>Adequate fencing is essential and must be enclosed so as to prevent the dog from escaping.</p> <p>Where complaints are received, odour, noise or other issues relating to the keeping of dogs, Council will conduct an inspection of the property. Council has the power under section 124 of the Local Government Act to impose restrictions on the numbers and manner in which dogs are kept on a particular property.</p>

Working Dogs	Seek prior approval from Council as to the number to be allowed on site.		<p>Dogs used for the purpose of tending or droving stock or the protection of stock.</p> <p>The companion animals Act 1998 requires all working dogs to be permanently identified and registered in accordance with part 2 of the Act. However no registration fee applies.</p> <p>Demonstrations may be required.</p> <p>Working dogs must also be kept in accordance with the above listed conditions.</p>
Cats	2		<p>The Companion Animals Act 1998 requires permanent identification and lifetime registration.</p> <p>Under the Companion Animals Act a permit is required to own a cat that is four (4) months old or older that is not desexed.</p> <p>Cats should be kept inside the dwelling and/or an enclosure from dusk until dawn.</p> <p>Compliance with desexing, use of identity collars with multiple bells, proper care, restriction of access to outdoors at night.</p>
Poultry, domestic and guinea fowl	<p>10 hens per property (not members of a recognized poultry club or association).</p> <p>Persons who are members of a</p>	10m	<p>Local Government (Orders) Regulation 1993 applies</p> <p>Hard paving must be provided under roosts in poultry houses if within</p>

<p>Poultry other than fowls including geese, turkeys, peafowl and other pheasants.</p> <p><i>*See further information regarding Registered Poultry Breeders at the end of this table.</i></p>	<p>recognized poultry club or association (must be able to provide membership documentation), please see table (pg 9) under registered breeders for proposed numbers</p> <p>2</p>	<p>15m</p>	<p>15.2 metres of a dwelling, public hall or school.</p> <p>Poultry yards must be enclosed to prevent escape of poultry and be kept free of rats and mice.</p> <p>Keeping of poultry must not create a nuisance to neighbouring properties. At all times poultry yards must be kept clean and free from offensive odours.</p> <p>Roosters are only to be kept by persons who are members of a recognized poultry club or association.</p> <p>Membership details must be provided to Council.</p>
<p>Pigeons</p> <p>NOTE: to establish the permissible number of pigeons by locality of premises, it will be necessary for Council Officers to assess the site conditions</p>	<p>As appropriate to species, size of cage, aviary or bird room</p>	<p>6m</p>	<p>Nuisance due to noise and also free flight of pigeons is to be minimised. Lofts must be constructed of hard paving with a smooth surface and graded to drain. Open lofts are not permitted.</p> <p>Lofts are to be kept clean at all times. Manure is to be cleaned up daily and disposed of correctly.</p> <p>Keepers of more than fifty (50) birds are to be members of official or registered aviculture societies.</p> <p>Upon complaint, Council may liaise with society representatives /officials to resolve the complaint.</p>

Birds including canaries, budgerigars, quails, finches and parrots.	Up to 30 30+	3m 6m	Cages and aviaries must be of appropriate size and regularly cleaned. National Parks and Wildlife permit is required to keep many native birds. Exemptions include Budgerigar, Zebra Finch, Galah and Sulphur Crested Cockatoo Noisy birds should be restricted in number.
Sulphur Crested Cockatoo and Long Billed Corella.	2 portable cages	3m	Sulphur Crested Cockatoo and Long Billed Corella are likely to be noisy if kept as single caged birds.
Rabbits	2	3m	Must be domestic breed and kept in cage. Wild rabbits are not permitted to be kept. Do not release into the environment.
Ferrets	2	10m of a neighbouring dwelling	The keeping of ferrets is not recommended, however where proper care (including appropriate secure cages) is available, the keeping of ferrets may be approved.
Pet rats and mice	2 of each	Recommended for indoors only	Must be kept in appropriate cages and not released into the environment.
Guinea pigs	2	3m	Must be kept in appropriate cages and not released into the environment.

The keeping of livestock within an allotment containing a residential dwelling is prohibited.

Sheep and goats	1 (one animal per one tenth hectare of land as a general guide) 5/½hectare	6m	Billy goats should not ordinarily be kept on residential premises. These animals are not to be slaughtered at the premises where they are kept.
Pigs	Prohibited in residential area.		The keeping of pigs is not considered appropriate in residential areas.

Horses and Cattle	1(one animal per half hectare of pastured land as a general guide)	30m 10m	Separation distances may vary at the discretion of Councils authorised Officers. In instances where officers establish the distance is causing a nuisance they can direct the distance to be lengthened.
Stallions	On vacant building block Prohibited		Fencing must be strong and durable to prevent escape. Stables and sheds must be hard paved and graded to drain and also located at least 30m from any other dwelling or building.

NOTES:

- a) The distances indicated in the third column of the above table are to be measured in metres from the animal yard or enclosure to the nearest dwelling, public hall school or premises used for the manufacture, preparation, sale or storage of food;
- b) Animal includes a mammal, bird, reptile, amphibian or fish. It does not include a human being (as defined by the Prevention of Cruelty to Animals Act);
- c) Schedule 2 5 of the Local Government Act, 1993 specifies minimum standards for issue of Notices and orders with respect to the keeping of animals;
- d) All Government institutions eg. Education research etc are exempt from this policy providing that all animals are kept on these premises are maintained to RSPCA standards;
- e) Existing households (identified as of 2012) that currently have animals (dogs, cats) in excess of the prescribed number will be able to keep these animals until they die. Then once the allowable number is reached the animal numbers cannot rise above the number stated in this policy;**
- f) Councils' authorised officers reserve the right to reduce numbers of animals further if deemed to be a health risk to the public or create offensive noise, odours, insufficient feed or for repeated offences with owners that fail to rectify the cause of the offence;
- g) Councils' authorised officers reserve the right to allow for more numbers if of the opinion to do so will not affect public health or create offensive noise, odours, and sufficient feed is available.

MEMBERS OF A RECOGNIZED POULTRY CLUB OR ASSOCIATION

CODE OF PRACTICE:

- All birds must be kept in a way that provides minimal impact to neighbours living on all sides of the property;
- Breeders must maintain numbers of fowl with the ideal of minimizing impact on neighbours;
- Poultry must not be kept under such conditions as to create a nuisance or be dangerous or injurious to health;
- Poultry yards must use appropriate manure and waste management practices so that there are no negative impacts to the environment;
- Fowls must not be kept within the specified distances of a neighbouring dwelling, public hall, school or premises used for the manufacture, preparation, sale or storage of food. Where no distance is explicitly noted, 10 metres shall be used as a standard;
- Owners must ensure that poultry yards be enclosed so as to prevent the escape of poultry from the property
- All poultry food and water vessels must be kept in hygienic condition;
- Poultry must be checked regularly and kept free from parasites;
- Owners must regularly take precautions to discourage rodents such as rats and mice;
- Owners are encouraged and advised to seek help on health and general poultry keeping issues from their local poultry club or veterinarian. Councils can provide poultry club contacts;
- All poultry enclosures to have fully enclosed roofs.

Proposed Numbers

Land Size	Registered Poultry Keepers Female Stock	Registered Poultry Keepers Male Stock
< 1000m ²	10	1
1001-2000	20	2
2001-4000	30	4
>4001	70	8

NOTE

Juvenile Stock

Juvenile stock should be allowed for the replacement of breeding or exhibition stock or for food purposes. Exemption of juvenile stock in the overall numbers of poultry should be allowed until poultry are of selection age. For breeding stock, the selection age should be up to one year and for food production, less than four months would be suitable.

5. Scope

This policy applies to animals kept for domestic purposes, as companion animals, pets or for hobby interests and commercial breeders.

This policy applies to urban residential areas of Tenterfield and Villages within the Shire, namely LEP zoning RU1, however, assessment of what constitutes "urban" will be dependent upon the locale of the property in question and its surroundings.

The principles contained in the prescriptive requirements will also apply to the keeping of animals for commercial purposes, including boarding, breeding, grooming, caring treatment, training.

However, where it is intended to keep animals for any commercial purposes (except the keeping of livestock on rural properties), it is necessary that **a development application be submitted to Council and planning consent obtained**. Consent to the operation of Commercial Animals Management Establishments may not be allowed where Council considers that the proposal would be harmful to the amenity of the locality.

This policy relates to Orders specified in Part 5 of Council's Local Orders Policy 2015.

6. Accountability, Roles & Responsibility

Elected Council

Adopt policies to enable the administration of Legislation and Regulatory requirements

General Manager, Executive and Management Teams

Open Spaces Regulatory & Utilities Manager, are responsible for the Regulatory provisions, approval and maintenance of procedures/protocols that support the Council's Policies.

Council Staff

Ranger - Responsible for ensuring compliance with this policy; and Staff will provide administration support.

7. Definitions

Nuisance: - a person or thing causing inconvenience or annoyance

Prohibited: - That has been forbidden; banned.

8. Related Documents, Standards & Guidelines

- Companion Animals Act 1998

- Local Government Act 1993
- Impounding Act 1993
- Poultry Association Code of Practice.

9. Version Control & Change History

Version	Date	Modified by	Details
V1.0	28/09/11	Council	Adoption of Original Policy (467/11)
V2.0	24/10/12	Council	Review/Amended (Res No. 445/12)
V3.0	25/03/15	Council	Review/Amended (Res No. 69/15)
V4.0	23/08/17	Council	Review/Amended (Res No. 168/17)



ENFORCEMENT POLICY FOR UNLAWFUL ACTIVITIES

Summary:

The purpose of this policy is to provide clear direction to all persons and companies who are carrying out, or may have carried out, unlawful activities or works within the Tenterfield Shire Council Local Government area.

Policy Number	1.051
File Number	N/A
Document version	V4.0
Adoption Date	To Be Confirmed – 7 Jan 2020 Placed on exhibition from 25 November 2020 to 7 January 2021 proposed effective date 7 January 2021
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Consultation Period	N/A
Review Due Date	January 2023 – 2 years
Department	The Office of the Chief Corporate
Policy Custodian	Manager Open Space, Regulatory & Utilities
Superseded Documents	23 August 2017 -168/17 28 March 2012 – 118/12 25 March 2015 – 68/15
Related Legislation	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Local Government Act 1993
Delegations of Authority	Manager Open Space, Regulatory & Utilities Manager Planning & Development

1. Overview

Implementation of this policy applies to all Planning, Health and Building Staff and Council Rangers, where staff are authorised to enforce local government, planning & environmental and other legislation in accordance with Councils Delegations of Authority Register.

Council's own employees and contractors carrying out works must do so in accordance with the law and this policy.

This policy applies to all persons and companies who are carrying out, or may have carried out, unlawful activities or works within the Tenterfield Shire Council Local Government area.

2. Policy Principles

2.1 General Principles

- Proportionality – taking action that is reasonable and relates directly to the actual breach.
- Consistency – ensuring that similar issues are dealt with in the same way.
- Transparency – ensuring that we do and why we do it is easily understood i.e. being open about the way we go about doing things.
- Customer Service – working with the business or individual to achieve compliance with the law by being approachable, courteous and efficient.
- Prioritising – making sure that resources are targeted primarily on those whose activities give rise to the most serious risk.

2.2 Responding to complaints of alleged unlawful activity

All complaints or notifications to Council relating to alleged unlawful activity should be acknowledged to the complainant within 10 working days and in accordance with Council's Complaints Policy. Action should be instigated within the following time frames:

- Urgent and life threatening matters should be actioned as soon as possible following receipt of the complaint. This means either on the day received or the day immediately following. Examples include: unsafe building works, collapsed buildings, surcharging drains, serious incidents where public health or the environment is at risk and unauthorised demolition of heritage items or contributory items.
- General compliance matters within 10 working days. Examples include: works not in accordance with consent or constructed without consent, illegal uses, noise affecting several persons, food complaints.
- Nuisance matters actioned within 10 working days. Examples include: Domestic noise, minor non-compliances such as overgrown land or matters where there are no immediate adverse health or safety impacts.
- Out of hours action requests are dealt with by the Rangers in the first instance, followed by a more formal investigation by the Planning and Development staff, if required. Examples include: out of hours works without approvals, pollution incidents and companion animals matters.

All complaints should receive communication from the Council Officer handling the complaint within 21 days detailing the action taken by Council or the action that Council plans to take.

Timeframes may vary depending on staff and other resources. In such instances, complaint acknowledgment communications may include temporarily revised investigation times.

2.3 Investigating unlawful activity

All complaints and matters regarding unlawful activity will be investigated, unless:

- The matter has already been actioned and resolved; or
- A private principle certifying authority (PCA) is responsible for monitoring compliance with the conditions of development consent; or

Note: Council will investigate matters where:

- a) The PCA fails or is unable to appropriately action a matter or where it is in the public interest;
- b) The PCA has taken all the action available under the legislation, but the offence continues or re-occurs despite that action;
- c) Where the complaint relates to Council property: and/or
- d) Complaint relates to an environmental pollution incident.

- The Council has no jurisdiction (e.g. NSW Work Cover issues on building sites or some internal matters within strata or community title buildings etc.); or
- The activity is determined to be lawful without an investigation; or
- The complaint is vexatious in nature.

If a decision is made not to investigate a complaint, the decision must be recorded with clear reasons why it was not investigated. The complainant must then be notified.

2.4 Options for action in confirmed cases of unlawful activity

Council will consider a range of matters before taking regulatory action.

Regulatory action is any formal and informal action taken to prevent or rectify infringements of the legislation. The regulatory options will differ where different pieces of legislation are used, but the principles of application should remain constant.

Approaches to be considered without taking formal regulatory action include:

- Taking no action on the basis of no reliable evidence or other appropriate reason.
- Counselling the person who carried out an unlawful activity to educate them on the relevant requirements. Council acknowledges the role of educational initiatives to achieve compliance in some situations.
- Negotiating with the person who carried out the unlawful activity to obtain an undertaking from them to address the issues of concern arising from an investigation. For example, cease current unauthorised works and submit appropriate application for the remaining works to be completed.
- Referring parties for mediation with the Community Justice Centre or alternatively for mediation.

- A letter requiring works to be carried out or works to cease in lieu of more formal action i.e. a Warning Notice and letter.

Such action may be all that is required in minor breaches where no serious impacts have occurred.

Whilst these approaches recognise that Council may use discretion in the process, Council is also obliged to uphold the law, including compliance with relevant administrative law principles (For example: acting fairly and equitably), and to act in the public interest.

Where appropriate, a staged approach may be taken. This is to ensure compliance will be adopted by giving businesses and individuals the opportunity to discuss and remedy the breach before action is taken, unless immediate action is required.

2.5 Enforcement action

Enforcement action will be taken with a minimal tolerance approach.

Enforcement action includes:

- Issuing of Directions, Notices and Orders requiring compliance with legislative requirements or those of an environmental planning instrument.
- Commencement of criminal proceedings for an offence under legislation or alternatively issuing Penalty Infringement Notice (PIN).
- Commencement of civil proceedings in a Court to either remedy or restrain unlawful activity.

However, before any enforcement action is taken, the action officer, management or the Council must acknowledge the circumstances in each case and consider the following questions:

- **Could the unlawful activity be carried out lawfully if development consent or an exemption from development consent was sought?**
In these circumstances, Council will be less inclined to proceed with legal action especially if an owner actively and positively attempts to regularise the situation.
- **Are the breaches technical or inconsequential in nature with no aggravating circumstances?**
Consideration will be given to the material implications that the breach might have on the interests of any party, as well as any detrimental affect on the amenity of the area or environment in general.
- **Could the non-compliance be easily remedied by some action on the part of the person responsible?**
In general Council will attempt to ensure compliance by informal means however there is a need to balance the public interest in enforcing the law with whether it is possible to remedy a breach and at what cost.
- **Has the unlawful activity created a health, safety or environmental hazard?**

Consideration should be given to the degree of detriment or risk to the environment.

- **Are the unlawful activities or works carried out on a heritage item and did they adversely affect the heritage significance?**

In most cases, Council's Heritage Advisor will be consulted in assessing the detriment to the natural or build environment and whether formal action is warranted.

- **Would it be in the public interest?**

Some of the issues that should be considered are: Has the unlawful activity affected a significant number of people and would enforcement action impact unreasonably on certain population groups, particularly disadvantaged or marginalised groups. Are there any circumstances of hardship affecting both the complainant and the person or business subject to the complaint?

- **How long has the unlawful activity been occurring and is enforcement action statute barred?**

A time limit might or existing use rights might apply, that prevents Council from taking legal action.

- **Have previous warnings been issued?**

If the investigation reveals that a previous warning has been issued and the unlawful activity is not resolved, a more formal approach would be appropriate.

- **Has the person responsible been educated about Council policy and unlawful activity? (That is: did the person know their actions were unlawful?)**

When deciding whether to take an educative approach, consideration will be given to issues such as the level of contrition shown by the wrongdoer, whether they have previously been warned as a result of this or similar behaviour, and the level of intent shown.

- **Are the costs of enforcing likely to be prohibitive for the nature of the offence?**

Consideration should be given to the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action. Council's action should be commensurate with the seriousness of the 'breach'.

- **Is the condition of development consent not being complied with unreasonable, or ambiguous?**

A condition of consent that is unreasonable or ambiguous can be unenforceable.

- **Would a draft local environmental plan or amendment make the unlawful activity or work legal in future?**

If there is a draft LEP that would make the unauthorised use legal, consideration should be given to deferring any enforcement action.

- **Is there any doubt over the evidence or the offence?**
Consideration should be given to whether the collected evidence clearly identifies an actual breach. Council should not take untimely or unwarranted action.
- **What are the chances of a success if challenged?**
Council should take into consideration what the likelihood is of a successful appeal or court challenge against the proposed enforcement action.
- **Does the person or business exhibit contrition for an offence?**
In cases it will be appropriate to have regard to the attitude of the offender and their willingness to prevent a recurrence of the problem.
- **Has the person or company who carried out the unlawful activity had an opportunity to provide representations or submissions on the matters?**
Council should consider all elements pertaining to the circumstances of the case leading to the non-compliance.

If the process is being used as a delaying action or there has been a blatant attempt to flout the law, appropriate enforcement action will be instigated without delay.

If it is considered that enforcement action is required, it will be taken in accordance with existing procedures and legislative processes.

In taking enforcement action, Council must recognise that the statutory process also provides avenues for representation and appeal and thereby natural justice principles will still be observed.

2.6 Importance of follow Up Action

Council staff will follow up matters reasonably required to be followed up to determine compliance. This includes conducting follow up inspections or re-inspections.

2.7 Building Certificate Applications under sections ~~149D~~ 6.24, 6.25 & 6.26 of the Environmental Planning and Assessment Act 1979

Council recognises that persons who may have carried out unlawful works may apply for a Building Certificate under sections ~~149D~~ 6.24, 6.25 & 6.26 of the EPA Act to regularise or formalise such unlawful works. However, it is Council's policy that such applications should not be encouraged to justify unlawful works, and in some instances will still warrant the issue of a fine and/or Notice or Order.

2.8 Community Education

The Council will ensure adequate information is available to raise awareness and educate the community about compliance and enforcement. This may involve awareness programs and publication of information on Council's website.

3. Policy Objectives

The objective of this policy applies to all Planning, Health and Building Staff and Council Rangers, where staff are authorised to enforce local government, planning & environmental and other legislation in accordance with Councils Delegations of Authority Register to minimise and help reduce non-compliance or unlawful activity.

4. Policy Statement

Tenterfield Shire Council has a minimal tolerance approach to unlawful activity.

This policy aims to provide consistency in enforcement action in matters of food safety, public health, environmental and development non-compliance and ensures natural justice principles are respected.

Tenterfield Shire Council's corporate values relating to responsive and responsible regulation, fairness and equity, accountability and integrity also apply to any action taken in accordance with this policy.

The Council acknowledges that it has an obligation under section 8 of the Local Government Act 1993 to ensure that the exercise of its regulatory powers is carried out consistently and without bias.

5. Scope

To define the requirement for any persons and companies who are carrying out, or may have carried out, unlawful activities or works within the Tenterfield Shire Council Local Government area.

6. Accountability, Roles & Responsibility

Elected Council

Adoption of policy to enable the implementation of legislation by appropriate authorised officers.

The public should note individual councillors do not have the ability to direct council staff in their day-to-day activities. Councillors can help individuals who raise concerns with them by satisfying themselves that their council's policies are being carried out correctly, however they cannot ignore or alter a policy in order to satisfy the demands of special groups.

Chief Executive, Executive and Management Teams

- The Chief Executive,
- Open Spaces Regulatory & Utilities Manager,
- Executive Management Team Managers are responsible for the development, approval and maintenance of procedures/protocols that support the Council's Policies.

Management Oversight Group

Open Space, Regulatory & Utilities Manager & Planning & Development Manager

Council Staff

Decision making relating to the investigation of reports alleging unlawful activity and taking enforcement action is the responsibility of appropriately authorised council staff or the council itself.

Council's Planning and Development staff, Environmental Health and Building Surveyors, will ensure this policy is implemented and associated procedures are followed and maintained.

Council's Rangers must also ensure activities where they investigate and take enforcement action are in accordance with this policy.

Council's Human Resources Manager and Director Strategic Planning and Environmental Services will ensure staff are provided with access to training to ensure this policy is implemented.

7. Definitions

Minimal Tolerance: is the least amount of tolerance allowable to non-compliance for: Environment/Amenity; Health/Safety; Approvals Compliance; Fire Safety or the Keeping of Animals, whilst taking into consideration Council's core values of fairness and equity as well as responsive and responsible regulations. It is a method of ensuring a consistent approach by all Council officers. The enforcement action taken will be dependent upon the circumstances in each case and consideration will be given to the various questions, as specified within Part 4.5 of this Policy.

Vexatious complaint: means a complaint that has been submitted to Council with the sole intention of annoying a person or company/entity, or is without any substance. These will be handled in line with Council's Policy **Complaints & Unreasonable Conduct – 1.033**.

Unreasonable complaint: means one that is repetitious, insists on pursuit of issues without merit, or as otherwise defined by Council's Policy **Complaints & Unreasonable Conduct – 1.033**, and will be handled in line with the same.

Unlawful activity: is any activity or work that has been or is being carried out:

Contrary to the terms or conditions of a development consent, approval, permission or license;

- a) Contrary to the Tenterfield Shire Local Environmental Plan as amended that regulates the activities or work that can be carried out on particular land;
- b) Contrary to a legislative or policy provision regulating a particular activity or work;
- c) Without a development consent, approval, permission or licence; and includes unauthorised works and uses; and
- d) Contrary to the laws of New South Wales in which Council is the regulatory authority.

Delegations of Authority Register: means the Delegations Register adopted by Tenterfield Shire Council from time to time.

8. Related Documents, Standards & Guidelines

The policy should be read in conjunction with the following Tenterfield Shire Council Policies:

- Customer Service Policy
- Delegation of Authority Register
- Complaints & Unreasonable Conduct
- Local Orders Policy
- Local Approvals Policy

This Policy is adapted for Tenterfield Shire Council from *Enforcement Guidelines for Councils*, published by the Office of the NSW Ombudsman, June–2002 December 2015.

9. Version Control & Change History

Version	Date	Modified by	Details
V1.0	28/03/12	Council	Adoption of Original Policy (Res No. 118/12)
V2.0	25/03/15	Council	Review/Amended (Res No. 68/15)
V3.0	23/07/17	Council	Review/Amended (Res No. 168/17)



LOCAL ORDERS

Summary:

The purpose of this policy is to provide guidance on the Regulatory Regime implemented by Council for the issuing of legal documents known as Notices and Orders.

Policy Number	3.123
File Number	
Document version	V3.0
Adoption Date	To Be Confirmed – 7 Jan 2020 Placed on exhibition from 25 November 2020 to 7 January 2021 proposed effective date 7 January 2021
Approved By	Council
Endorsed By	Council
Minute Number	(Insert)
Consultation Period	(Insert dates) – 42 days unless statutory period
Review Due Date	January 2024 – 3 years
Department	The Office of the Chief Corporate
Policy Custodian	Manager Open Space, Regulatory & Utilities & Manager Planning & Development Services
Superseded Documents	23 August 2017 - Local Orders Policy 25 March 2015 – Local Orders Policy
Related Legislation	<ul style="list-style-type: none"> • Local Government Act 1993 • Local Government (General) Regulations 2005 • Apiaries Act 1985 • Companion Animals Act 1998 • Companion Animals Amendment Act 2001 and 2006 • Companion Animals Regulation • Environmental Planning and Assessment Act 1997 • Exhibited Animals Protection Act 1986 • Food Act 2003 • Food Regulation 2015

Delegations of Authority

- Home Building Act 1989
 - National Parks and Wildlife Act 1974
 - Non-Indigenous Animals Act 1997
 - Public Health Regulation 2012
 - Public Health (General) Regulation 2002
 - Protection of the Environment Operations Act 1997
 - Swimming Pool Act 1992
 - Water Management Act 2000
-
- Chief Executive,
 - Chief Corporate Officer
 - Manager Open Spaces, Regulatory and Utilities
 - Manager Planning & Development Services
 - Ranger

1. Overview

~~Up to present times,~~ Council has been conferred significant regulatory and enforcement responsibilities (being the ARA, or, Appropriate Regulatory Authority), under a number of different statutory instruments. Each of these instruments (legislated Acts and Regulations) offer a number of different enforcement options. This policy focuses on one of these enforcement options, being, the issue of Notices and Orders as a legal means to achieve community amenity and environmental protection of the Shires rural and bushland landscapes.

2. Policy Principles

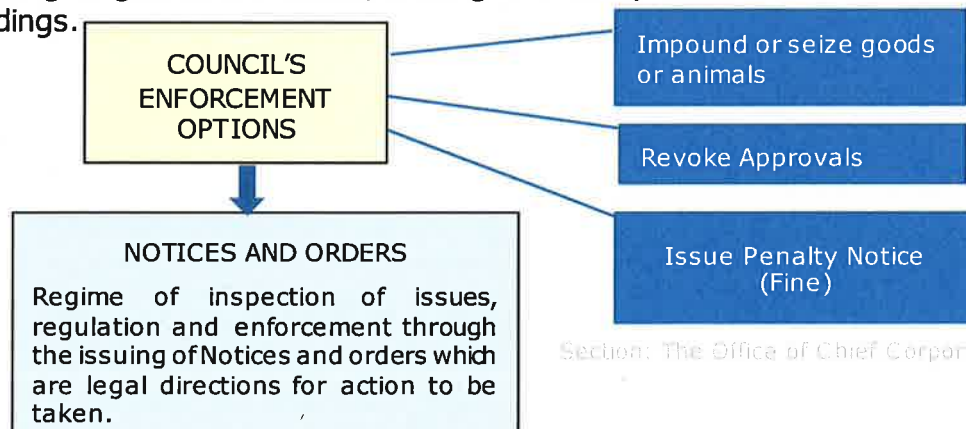
This policy has been drafted in line with Parts 2 and 3, and Section 159 of the *Local Government Act 1993*.

This policy **does**:

- Outline some of the different types of Notices and Orders Council may issue under legislated Acts and Regulations, and the specific circumstances in which Council may choose to issue such a Notice or Order.

The policy **does not**:

- Detail the enforcement processes Council's Authorised Officers undertake outside of the Notice/Orders regime, including revocation of approvals, impounding of goods or animals, issuing of Penalty Notices and Court proceedings.



3. Policy Objectives

Generally, the policy aims to:

- Provide a framework for dealing with regulation of building, animal, environmental and public health issues within the Tenterfield Shire Council area.
- To outline common and consistent requirements for the issue of Notices and Orders relevant to the policy.
- To further make Council's policy requirements for regulatory matters readily accessible to the community.

a. COMMENCEMENT AND REVOCATION

The policy commenced on 1 April 2015.

The policy is automatically revoked at the expiration of 12 months after the declaration of the poll for Council election, unless Council decides to revoke it sooner.

b. NOTICES AND ORDERS TO WHICH THE POLICY RELATES

The policy applies to Notices and Orders issued under a number of legislation, referenced in table 1 (below). Orders have been grouped into sections to which they relate, to make searching for the orders easier when using this document.

NOTE – Certificates relating to existing Notices and Orders in force on a property can be gained by application to Council under section 735A of the *Local Government Act 1993*, and ~~section 121ZP~~ clause 41 of Schedule 5 of the *Environmental Planning and Assessment Act 1979*.

TABLE 1 – Notices and Orders to which this policy relates.

ORDER NUMBER	DESCRIPTION OF ORDER
<i>Local Government Act 1993</i>	
Order 1	Demolish a building
Order 3	To repair or make structural alterations to a building
Order 5	To take necessary steps to comply with relevant standards
Order 7	To fence land
Order 8	Numbering of premises for identification
Order 9	Fence, empty, fill or cover up a waterhole
Order 10	Remove, stack or cover articles or matter, to erect fences or plant

Order 11	To do or to refrain from doing things to prevent environmental damage, to repair environmental damage or to prevent further
Order 12	Take necessary steps to control the flow of surface water
Order 15	Not to conduct or to cease conducting an activity on premises
Order 16	To cease the use of premises or evacuate
Order 17	To leave or to not enter premises
Order 18	Management for the keeping of birds and animals
Order 19	To use or not use a tennis court as specified
Order 20	Sanitation for food premises
Order 21	Keep land in a safe / healthy condition
Order 22	Appropriate storage, treatment and disposal of waste
Order 22A	To remove or dispose of waste
Order 23	To connect premises to Council's water supply
Order 24	To connect to a sewerage system
Order 25	Cease use of a human waste treatment device
Order 27	To remove or prevent the placement of an object in a public place, or prevent any object or matter from being deposited
Order 28	To take steps necessary to prevent or repair damage to a public
Order 29	To alter or repair or structure or undertake work on, over or under a
Order 30	To comply with an approval
Environmental Planning and Assessment Act 1979	
Order 1	Cease use of premises for purpose specified
Order 2	To demolish or remove a building Stop building or subdivision work
Order 3	To not demolish or remove (or cease demolishing) a building To demolish or remove a building
Order 4	To repair or make structural alterations to a building To stop demolishing, or not to demolish, a building
Order 5	To alter, remove or demolish an advertising structure To repair or make structural alterations to a building
Order 6	Ensure or promote adequate Fire Safety To alter, remove or demolish an advertising structure
Order 7	Erect or install structures to protect persons on or in a public space
Order 8	Evacuate premises Not to conduct , or to cease conducting an activity on a premises
Order 9	Cease use of a building Exclusion order to leave premises or not enter premises
Order 10	Cease use of premises, or to evacuate premises To restore premises to condition they were before unlawful works occurred
Order 11	To leave premises and not enter premises Bring unlawful development into compliance with approval and/or
Order 12	Restore unlawful building works To repair or remove a building in a public place

Order 13	Bring unlawful development into compliance with relevant standards To complete authorized works under a planning approval
Order 14	To repair or remove a building To do or refrain from doing any act to remedy or restrain a breach of Division 5.2 or a breach of a consent for State significant
<i>Environmental Planning and Assessment Act 1979 continued.....</i>	
Order 15	To comply with a development consent
Order 16	To complete works in accordance with a development consent
Order 17	Carry our works associated with a subdivision
Order 19	Cease carrying out building works or subdivision works
<i>Protection of the Environment Operations Act 1997</i>	
Section 91	Clean Up notice
Section 96	Prevention notice
Section 135	Smoke abatement notice
Section 144	Cease use of premises as a waste facility
Section 264	Noise control notice
Section 276	Noise abatement direction
<i>Public Health Act 2010</i>	
Section 33	Direct a regulated system to be maintained
Section 42	Improvement notice
Section 44	Direct Improvement notice be complied with
Section 45	Prohibition Order
<i>Food Act 2003</i>	
Section 45	Notification of seizure of goods
Section 58	Improvement notice
Section 60	Prohibition order
<i>Noxious Weeds Act 1993</i>	
Section 18	Control noxious weeds on land
Section 18A	Notice of proposed weed control
Section 20	Notice of works to be carried out subject to non-accordance with weed control notice
Section 45	Notice of entry
<i>Impounding Act 1993</i>	
Section 15/16	Impound motor vehicle, animal or other article
Section 20	Sale or disposal of impounded items
<i>Companion Animals Act 1998</i>	
Section 10B	Notice requiring registration of animal
Section 18	Notice of seizure of an attacking or biting dog
Section 21	Nuisance order – Dog
Section 31	Nuisance order - Cat
Section 34	Declaration of dangerous dog
Section 58A	Declaration of a restricted breed of dog
<i>Swimming Pools Act 1992</i>	
Section 23	To bring a pool into compliance

Roads Act 1993	
Clause 91	Direction to provide support for public road
Clause 93	Direction to fill excavation
Clause 95	Direction to remove windblown sand, soil or other matter
Clause 96	Direction to provide fence/floodgates, or make repairs to fence
Clause 97	Direction to locate new/replacement services in conduits for utility
Clause 98	Alter works or structure location on or over a public road
Roads Act 1993 continued.....	
Clause 99	Repair or maintain water supply work on or over a public
Clause 100	Repair or replace bridge or level crossing
Clause 101	Restore a public road to its previous condition

c. . PROCESS FOR NOTICES AND ORDERS

The process for issuing Notices and Orders varies in line with the Act under which it is issued. The regiment entails the issue of a Notice, Order or Direction either verbally or in writing by one of Council's duly Authorised Officers.

Notices, Orders and Directions referenced within this document are formal legal directions which can be followed up with monetary penalties as well as court action if they are not complied with.

The terms Direction, Notice and Order are interchangeable within this policy, and will depend upon the legislation under which they are issued.

NOTE – A "Notice of Intention to issue an Order" does not have the same meaning as a Notice under this policy.

d. CONTENT OF A NOTICE OR ORDER

In all cases Council's Officers aim to compile clear and concise directions in Notices and Orders, in an unambiguous manner. The terms of the Order will be given and may be specified against benchmarks, standards or sections of legislation where appropriate. Contents of Notices and Orders will vary dependent upon the actual issue at hand.

All Notices and Orders will state a clear timeframe for compliance. In the event of a verbal Order, hand delivered Order, or an Emergency order, the timeframe commences immediately from the time at which it is given. In the case of posted Orders, the timeframe commences from the fourth working day after the Order is posted.

Orders will be served on either a person (individual) or a corporation, but not a business name.

e. EXTENSIONS OF TIME

Where a person or corporation cannot comply with the timeframe specified in the notice or Order, they may request an extension of time in writing. Details on this process are included within each Notice/Order issued by Council. Each request for a time extension will be assessed on its individual merit.

f. REPRESENTATIONS AGAINST AN ORDER

In some cases the recipient of an Order has the opportunity to make representations against the issue of the Order, or the terms of the Order. Where this is applicable, the Order will state the correct pathway for such representations to be made.

Most Orders allow for the recipient to appeal to a Court of competent jurisdiction against the issued Order.

The following Orders do not allow for appeal to a Court:

- A "Notice of Intention to issue an Order" under the *Local Government Act* or the *Environmental Planning and Assessment Act*.
- A "Clean Up Notice" issued under the *Protection of the Environment Operations Act*.
- A "Registration Notice" issued under the *Companion Animals Act*.
- An "Improvement Notice", or "Prohibition Order" issued under the *Food Act*.

g. COMPLIANCE WITH AN ORDER

Where the terms of an Order are complied with within the timeframes specified, the recipient will receive notification from Council that the Order has been satisfied and thus revoked.

Where the terms of an Order have not been satisfied, Council may give effect to the Order by taking further action. This can include Council entering the land to have works completed by a contractor, or, commencement of proceedings in either the Local Court or Land and Environment Court of NSW.

All Court actions taken for non-accordance with an Order will be undertaken within the timeframes specified by relevant legislation.

h. COST RECOVERY

Where Council engages contractors to carry out the works to comply with the terms of an order, the cost of these works will be on forwarded to the responsible person or company for payment. In the case of works on private property the landowner will be responsible for the payment.

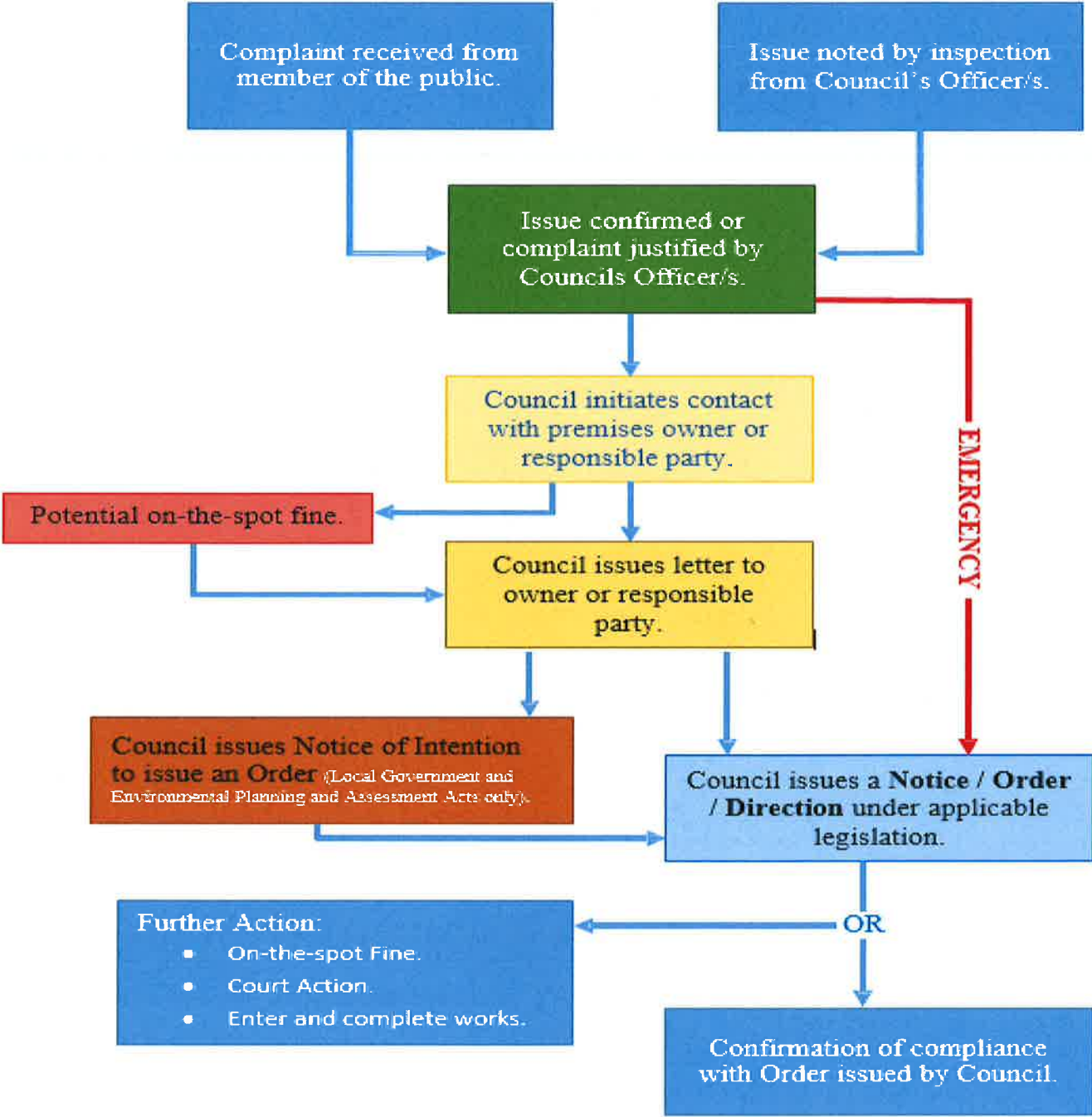
Council can also recover reasonable costs to give effect to an order under section ~~121~~10.2 *Environmental Planning & Assessment Act*; section 104 *Protection of the Environment Operations Act* and section 26 *Noxious Weeds Act*. Under the *Protection of the Environment Operations Act*, the cost compliance notice and associated administrative fee can also be registered as a debt against the title of the land.

Council's fees and charges also provide for the recovery of administrative costs involved in giving effect to an order under other Acts.

Representations can be made to waive an administrative fee where exceptional circumstances exist. This request must be in writing and accompanied by the relevant fee (where applicable).

i. ORDERS ENFORCEMENT PROCESS

Council employs a number of duly Authorised and Enforcement Officers who are able to enter non- residential areas of a premises (in most cases without a search warrant), inspect issues, collect evidence, give directions for work to be undertaken or activities to cease, and issue Notices and Orders. Generally, the process is as follows:



7. POLICY INDEX

The Orders under this policy have been grouped into five (5) basic parts for ease in interpreting which Orders are applicable to broader issues. These five (5) parts are as follows:

	PART 1 – Environment and Amenity	Page 9
	PART 2 – Health and Safety	Page 15
	PART 3 – Compliance with Approvals	Page 24
	PART 4 – Building Fire Safety	Page 30
	PART 5 – Animals	Page 33

NOTE – While each part makes specific reference to certain Orders, these Orders can apply across multiple parts. The grouping has been undertaken as a means to give a best likely fit under broader circumstances only.

Council’s enforcement processes are not detailed as part of this policy.

Each part is split into two (2) sections, the first of which details the various Orders applicable under various legislation, and the second of which gives general and/or specific assessment criteria Council’s Officers use when determining if an Order should be issued.



PART 1 – ENVIRONMENT AND AMENITY



Local Orders Policy – PART 1 – Environment and Amenity

ORDER	TO DO WHAT?	Local Government Act 1993	IN WHAT CIRCUMSTANCES?	TO WHOM?
Order 1	To demolish or remove a building		Building is erected in a catchment district and causes or is likely to cause pollution of the water supply	Owner of building
Order 3	To repair or make structural alterations to a building		Building is erected in a catchment district and causes or is likely to cause pollution of the water supply	Owner of building
Order 10	To remove or stack articles or matter, to cover articles or matter, to erect fences or screens or to plant trees		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	Owner or occupier of land
Order 11	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		Work carried out on land has caused or is likely to cause environmental damage, being damage to the physical environment that is caused by: <ul style="list-style-type: none"> • drainage, or • drainage works, or • obstructing a natural watercourse other than by a work constructed or used under a water management work approval granted under the <i>Water Management Act 2000</i> 	Owner or occupier of land
Order 12	To do such things as are necessary to control the flow of surface water across land		Other land, or a building on the land or other land, is being damaged or is likely to be damaged	Owner or occupier of land
Order 19	To use or not to use a tennis court as specified		Actual or likely annoyance or threat to the safety of neighbours or users of a public place	Occupier of land
Order 27	To remove an object or matter from a public place or prevent any object or matter being deposited there		The object or matter: <ul style="list-style-type: none"> (a) is causing or is likely to cause an obstruction or encroachment of or on the public place and the obstruction of 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 	Person causing obstruction or encroachment or owner or occupier of land from which the object or matter emanates or is likely to emanate
Order 28	To take whatever steps are necessary to prevent damage to a public place and to repair damage to a public place		There is actual or likely damage: <ul style="list-style-type: none"> (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 	(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 surface drainage flows or from which spray emanates Owner of the work or structure
Order 29	To alter or repair a work or structure on, over or under a public place		It is in the public interest to do so	

ORDER

TO DO WHAT?

Environmental Planning and Assessment Act 1979

~~To alter, obliterate, demolish or remove an advertisement and any associated advertising structure~~

Repair Order

To repair or make structural alterations to a building

IN WHAT CIRCUMSTANCES?

Environmental Planning and Assessment Act 1979

- ~~(a) the advertisement is unsightly, objectionable or injurious to the amenity of any natural landscape, foreshore, public reserve or public place at or near where the advertisement is displayed;~~
- ~~(b) the advertisement is displayed contrary to provision made by or under this Act;~~
- ~~(c) the advertising structure is erected contrary to a provision made by or under this Act;~~

The building is or is likely to become a danger to the public or is so dilapidated that it is prejudicial to the occupants, persons or property in the neighbourhood.

Order 14

~~To repair or remove a building~~

Remedy or Restrain Breach Order

To do or refrain from doing any act to remedy or restrain a breach of Division 5.2 (or an approval under that Division) or a breach of a consent for State significant development

~~The building is situated wholly or partly in a public place~~

The breach has occurred, is occurring or is likely to occur

TO WHOM?

~~The person who caused the advertisement to be displayed or advertising structure to be erected or the owner or occupier of the premises on which the advertising structure is erected~~

Owner of the building

~~Occupier or owner of the building~~

The person who cause, is causing or is likely to cause the breach, or the person entitled to act on the approval or consent.

Protection of the Environment Operations Act 1997

Sec. 91 Direction to take Clean Up action (Clean Up notice)

Where Council reasonably suspects that a pollution incident has occurred or is likely to occur

Sec. 96 Direction to take Preventative action (Prevention notice)

An activity is carried out in an environmentally unsatisfactory manner if:
(a) it is carried on in contravention of, this Act, the regulations or a condition attached to an environmental protection licence, or an exemption given under this Act, or

(b) it causes, or is likely to cause, a pollution incident, or

(c) is not carried on by such practicable means as may be necessary to prevent, control or minimise pollution, the emission of noise or the generation of waste, or

(d) is not carried out in accordance with good environmental practice

Sec. 135B Smoke Abatement notice

Excessive smoke (as defined) is being, or has at any time within the past 7 days been, emitted from a chimney on or in residential premises

Occupier or premises, or person suspected of causing, or having caused a pollution incident
Occupier of the premises, or person carrying on the activity

Occupier of the premises

Sec. 144

Direction to cease using the premises as a waste facility

Sec. 264

Noise Control notice

Where Council reasonably suspects that the premises is being used for storage, treatment, processing, sorting or disposal of waste without approval
Where the emission of noise, when measured at any specified point, is in excess of a specified level

Owner of the premises

Occupier of any premises, or the person who carries on or proposes to carry on an activity, or who uses or operates or proposes to use an article at any premises

ORDER	TO DO WHAT? <i>Protection of the Environment Operations Act 1997</i>	IN WHAT CIRCUMSTANCES?	TO WHOM?
Sec. 276	Noise Abatement direction	When offensive noise is being omitted from any premises, or has been at any point in the past 7 days	Occupier of premises, or any person to be making or contributing to the making of noise
Sec. 18	Weed control notice	The owner or occupier has failed to carry out any of their obligations under the <i>Noxious Weeds Act 1993</i> to control noxious weeds	Owner or occupier of land
Sec. 18A	Notice of a proposed weed control notice	The owner or occupier has failed to carry out any of their obligations under the <i>Noxious Weeds Act 1993</i> to control noxious weeds	Owner or occupier of land
Sec. 20	Notice that works will be carried out to control noxious weeds	The occupier has failed to comply with the weed control order on land subject to a weed control order	Owner or occupier of land
Sec. 45	Notice of entry to premises	Notice to the occupier of the premises for the intent to enter the premises within a period specified in the notice to carry out works	Occupier of premises

1.1 ASSESSMENT CRITERIA.

Tenterfield is comprised of a wide variety of environments, scenic landscapes and unique villages that make up the Shire, including rural landscapes, agricultural uses, commercial shopping areas, residential village zones, bushland and National Parks.

Council may take action in an aim to remedy issues raised by lodgement of complaints or through Council's officers noting potentially serious matters onsite. Council will account for the following criteria when deciding if an Order should be issued for an environment or amenity related issue:

Environment

- There are, or there is the potential to have, detrimental effects to the natural environment including waterways, lands, or air.
- There is, or there is the potential for, water pollution.
- There is movement of stormwater off a site onto adjoining lands.
- There is cut and fill, and the potential for contaminated soils, or fill which does not meet required standards.
- There is land degradation or pollution emissions (including odour or noise) that is interfering with the natural environment.
- Noxious weeds are present.
- There is unacceptable levels of smoke emissions from a residential premises.

Amenity

- There is evidence of an adverse impact on the amenity of a local area. This may relate to the individual localities and/or villages and/or rural settings, or, the Shire as a whole.
- Objects, materials and/or structures located either in a public place, or, within view of a public place are causing a visual amenity issue and detracting from the amenity of the locale.
- Objects, materials and/or structures located either in a public place or within a road reserve are causing a hazard or nuisance.
- Noise emissions are inappropriate for the locale.
- There is, or there is the potential for an annoyance or threat to the safety of users of a public place.
- Materials or structures pose a risk to pedestrians or vehicular traffic.

Where an activity is being undertaken in/on a public place, Council will consider the issue of an Order where activities are not in line with our **Local Approvals Policy**, as well as any activity being undertaken without approval, or, an activity being undertaken outside of the conditions of an approval. Furthermore, should the activity (whether approved or not) cause an annoyance or danger to the public, Council may consider the issuing of an Order.

Advertising signage must be undertaken in accordance with Councils **Development Control Plan**.

In assessing the issuing of an Order for smoke emission matters, Council will consider if any residential woodsmoke constitutes an offence under the *Protection of the Environment Operations Act 1997*, if the fuel heater has been installed by an accredited installer, complies with relevant Australian Standards, is an approved system, if the system has been installed so as to minimise the impact of smoke on the locale and is not in accordance with the relevant state guidelines.

In assessing the issuing of an Order for noise emission matters, Council will consider if any emissions constitute an offence under the *Protection of the Environment Operations Act 1997*. Council recommends the following approach to handle noise matters in the first instance:

- (a) Aim to solve the problem in a cordial manner with the person/s causing the noise, as often people do not realise they are causing a noise annoyance.
- (b) Where noise emissions continue, you can contact a Community Justice Centre to arrange mediation with the person causing the noise emissions. These are Government Funded centres who can settle differences and neighbourhood disputes without parties having to enter into legal processes.
- (c) Where a party will not enter into mediation, or the noise continues after mediation, you can contact Council for investigation. Council's Officers will then advise on the best course of action.

NOTE – Private individuals can approach the Local Court to seek a Noise Abatement at any time. Where the Court is satisfied, it will issue the abatement to cease the noise emissions. This process can be undertaken independently of Council.

Stormwater must be controlled wholly within the premises from which it originates. Buildings and other developed hardstand areas play a major role in contributing to the concentration of stormwater flows, and it is therefore the owner's responsibility to control stormwater within any given lands. In assessing whether an Order should be issued for stormwater matters Council will consider: if lack of controls are contributing to an increase of surface flows to other properties; if there is defective stormwater controls including pipework, drains, guttering and downpipes; if there is the obstruction of a natural watercourse; and, if discharge is directed to an adjoining property.

Water pollution is directly referenced through State Legislation. Council will consider the issue of an Order for anything that changes, or has the potential to change the physical, biological or chemical composition of a waterway.



PART 2 – HEALTH AND SAFETY



Local Orders Policy – PART 2 – Health and Safety

ORDER	TO DO WHAT?	IN WHAT CIRCUMSTANCES?	TO WHOM?
	Local Government Act 1993		
Order 7	To fence land	Public health, safety or convenience renders it necessary or expedient to do so and there is no adequate fence between the land and a public place	Owner or occupier of the land
Order 9	To fence, empty, fill in or cover up a waterhole in the manner specified in the order	Hole or waterhole is, or may become, dangerous to life	Owner or occupier of the land
Order 15	Not to conduct, or to cease conducting, an activity on the premises (irrespective of approvals issued under the Act)	The activity constitutes or is likely to constitute: (a) A life threatening hazard, (b) A threat to public health and safety, and is not regulated or controlled under any other Act by a public authority	Any person apparently engaged in promoting, carrying out or conducting the activity
Order 16	To cease use of the premises or to evacuate the premises	A person to whom an Order 15 is given has failed to comply with the Order	The person to whom Order No 15 is given
Order 17	To leave or to not enter a premises	A person to whom an Order 15 is given has failed to comply with the Order	Any person
Order 20	To do such things as specified in the order to put the premises, vehicles or articles used for the manufacture, preparation, sale, storage, transportation or other handling in relation to food into a clean or sanitary condition	The premises, vehicle or article is not in a clean or sanitary condition	Owner or occupier of a premises, or the operator of a vehicle or article
Order 21	To do things as specified in the order to ensure that land, or premises, is kept in a safe and healthy condition	The land or premises is not in a safe or healthy condition	Owner or occupier of land or premises
Order 22	To store, process, treat, collect, remove, dispose of or destroy waste which is on land or premises in the manner specified in the order (provided it is not inconsistent with the <i>POEO Act 1997</i>).	Waste is present or generated on the land or premises and is not being dealt with satisfactorily, and is not regulated or controlled by, or subject to, a licence or notice under the <i>POEO Act 1997</i> .	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
Order 22A	To remove or dispose of waste that is on any residential premises or to refrain from keeping waste on those premises	The waste is, in the opinion of an environmental health officer, causing or likely to cause a threat to public health or the health of any individual	Owner or occupier of any premises
Order 23	To connect premises to Council's water supply	The premises are situated within 225 metres of a water pipe of the council	Owner or occupier of land
Order 24	To connect the premises to a sewerage system by a specified date	The premises are within 75 metres of a sewer of the Council	Owner of the premises
Order 25	Not to use or permit the use of a human waste storage facility on premises after a specified date	It is necessary for the purpose of protecting public health	Owner or occupier of the premises

Local Orders Policy – PART 2 – Health and Safety

ORDER	TO DO WHAT?	IN WHAT CIRCUMSTANCES?	TO WHOM?
Order 4	<p>To make structural alterations to a building</p> <p>Stop Demolition Order To stop demolishing, or not demolish, a building</p>	<p>(a) The building is, or is likely to become, a danger to the public (b) Building is so dilapidated as to be prejudicial to its occupants or to persons or property in the neighbourhood</p> <p>Demolition requiring a planning approval is being carried out, or would be carried out, without approval or in contravention of an approval.</p>	<p>Owner of the building The owner of premises</p> <p>Owner or occupier of land</p>
Order 7	<p>Public Safety Order To erect or install on or around a building such structures or appliances as are necessary to protect persons or property on or in a public place</p>	<p>(a) Building is about to be erected, or (b) Building is situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place, or (c) Building is about to be demolished, or (d) Work is about to be carried out, or (e) Work is about to be demolished</p>	<p>Owner or occupier of the building Any person</p>
Order 9	<p>To cease use of a building</p> <p>Exclusion Order To leave premises or not to enter premises</p>	<p>The use of the building: (a) is not consistent with its classification under this Act or the Local Government Act 1993, and (b) constitutes or is likely to constitute a life-threatening hazard or a threat to public health or public safety, and (c) is not regulated or controlled under any other Act by a public authority</p> <p>A person who has failed to comply with a Stop Use Order issued because the use constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety.</p>	<p>Owner of vehicle and/or person/s who claim interest Owner of vehicle and/or person/s who claim interest</p>
Sec. 16	<p>Impounding Act 1993 Motor vehicle may be impounded</p>	<p>Motor vehicle which is abandoned or unattended may be impounded. Council gives notice of impoundment unless removed within a specified timeframe</p>	
Sec. 20	<p>Items impounded may be sold or disposed of</p>	<p>Animals that are abandoned, unattended or trespassing, or articles abandoned or unattended may be impounded. Council gives notice that the item has been impounded and will be sold or otherwise disposed of if not claimed within a stated period</p>	

Swimming Pools Act 1992

Sec. 23

Direction issued to take, in such reasonable time as specified within the direction, such measures as specified to ensure that swimming pool or premises comply

Conditions that make a swimming pool unsafe

Owner of the premises

Local Orders Policy – PART 2 – Health and Safety

ORDER	TO DO WHAT? <i>Food Act 2003</i>	IN WHAT CIRCUMSTANCES?	TO WHOM?
Sec. 45	Notification of seizure	Upon seizure of an item under the <i>Food Act 2003</i>	Person from whom the item was seized
Sec. 58	Improvement Notice	<p>(a) A premises used by a food business in connection with the handling of food intended for sale or any equipment or food transport vehicle is in an unclean or insanitary condition or is otherwise unfit for the purpose for which it is designed or intended to be used, or</p> <p>(b) A premises used by a food business in connection with the handling of food intended for sale or any equipment or food transport vehicle does not comply with a provision of the Food Safety Standards with which the food business is required to comply, or</p> <p>(c) In relation to any premises used in connection with the handling of food for sale or any food transport vehicle, any relevant food safety program prepared in accordance with the regulations is not being implemented adequately by a food business, or</p> <p>(d) Any provision of the Food Standards Code with which a food business is required to comply is being contravened in relation to the handling of food intended for sale on any premises, or in any food transport vehicle, used by the food business in connection with the handling of food intended for sale</p>	Proprietor of the business / owner of the vehicle
Sec. 60	Prohibition Order	Where circumstances that result in the issue of an Improvement Notice exist, and the proprietor of the food business has not complied with the Improvement Notice within the specified time period, and there is a serious danger to public health.	Proprietor of the business / owner of the vehicle
Sec. 33	Public Health Act 2010 Direct a regulated system to be maintained	When investigating an instance or occurrence of legionnaires disease	Occupier of the premises

Local Orders Policy – PART 2 – Health and Safety

ORDER	TO DO WHAT?	IN WHAT CIRCUMSTANCES?	TO WHOM?
Sec. 42	<p>Improvement Notice</p> <p>Public Health Act 2010</p>	<p>Non complying premises or procedures - An improvement notice can be issued where a regulated system or a public swimming pool or spa pool or premises at which a person carries out skin penetration procedures if the officer believes, on reasonable grounds, that:</p> <ul style="list-style-type: none"> (a) the premises, or a regulated system, public swimming pool or spa pool at those premises, does not comply with an enforceable requirement, or (b) a regulated system, public swimming pool or spa pool at the premises is not being maintained or operated in accordance with an enforceable requirement 	Occupier
Sec. 44	Take action referred to in an Improvement Notice to enter the premises	The occupier of a premises fails to comply with an Improvement Notice	Occupier of a premises where there is a regulated system
Sec. 45	Prohibition Order	<p>1) That any of the circumstances in which an improvement notice may be issued exist and that:</p> <ul style="list-style-type: none"> (i) the occupier has not complied with an improvement notice within the time required under the notice, and (ii) the issue of the prohibition order is necessary to prevent or mitigate a serious risk to public health, or <p>2) that any of the circumstances in which an improvement notice may be issued exist and that the issue of the order (without first issuing an improvement notice) is urgently necessary to prevent or mitigate a serious risk to public health</p>	Occupier of the premises
Sec. 91	<p>Roads Act 1993</p> <p>Landowner to provide support for a public road as part of their duty of care</p>	The duty of care in relation to support for land as referred to in section 177 of the <i>Conveyancing Act 1919</i> applies in relation to land on which a public road is situated and land adjoining that land as if the land on which the public road is situated were private land and the appropriate roads authority were the owner of that land	Landowner
Sec. 93	Fill in an excavation	The excavation threatens the stability of the public road	Owner of any land adjoining a public road

Local Orders Policy – PART 2 – Health and Safety

ORDER

TO DO WHAT? *Roads Act 1993*

Sec. 95	Remove windblown sand, soil or other matter
Sec. 96	Alter a fence, provide floodgates in any such fence, or make repairs to a fence
Sec. 97	Direction to locate any new or replacement services in conduits used for the carriage of utility services across the road, and to pay proportion of the costs, prescribed by the regulations, incurred by the roads authority in connection with the construction of the conduit. Alter the work or structure or the location of work or structure
Sec. 98	
Sec. 99	Direction to repair or maintain any water supply work or drainage work
Sec. 100	Direction to repair or replace the bridge or level crossing (or, in the case of an overbridge, the road under the bridge)
Sec. 101	Direction to restore a public road to its previous condition

IN WHAT CIRCUMSTANCES?

When sand, soil or other matter has been washed or blown onto a public road and action is needed to remove an obstruction and/or prevent recurrence To prevent any obstruction to the free flow of surface drainage from a public road, or to the free flow of a watercourse that crosses a public road Where placement of utility services are required and the public road contains conduits for the carriage of utility services across the road
When the roads authority requires the alteration of work located in, on or over public roads
Where maintenance or repairs are required to certain water supply and drainage works that are situated in, on or over a public road, and are controlled by that body
Where a public road passes over, under or across a private railway by means of a bridge or level crossing and the bridge or level crossing (and, in the case of an overbridge, the road under the bridge) is in an unsatisfactory state of repair Where excavation etc has resulted in damage to the public road, or damage is a result of a leakage from, or breaking or bursting of, any object or work placed in, on or over the road

TO WHOM?

Owner of land
Occupier of any land in the vicinity of a public road Any person who is entitled to place utility services in, on or over the road
A public authority that is an occupier of land, or the occupier of land Irrigation corporation, a private irrigation board, a private drainage board or a private water trust Owner of the railway
Any person by whom a public road is dug up; a person responsible for placing the object or work, or has the care or control of the object or work, or whose act or omission caused the leakage, breaking or bursting.

1.2 ASSESSMENT CRITERIA.

Tenterfield Shire Council has been vested with responsibility for a number of regulatory provisions related to public health and safety.

Council may take action in an aim to remedy issues raised by lodgement of complaints or through Council's officers noting potentially serious matters onsite. Council will account for the following criteria when deciding if an Order should be issued for a health or safety related issue:

- 1.3 **Health and Safety**
- Land or premises are not considered to be in a healthy or safe condition.
 - Land or premises are in a condition that affects the healthy amenity or safety of the surrounding areas.
 - There is a life threatening hazard or a serious threat to public health or public safety.
 - Health of persons is likely to be detrimentally affected.
 - There is a past history of non-compliance.
 - There is an obstruction of a public space or public service that may cause a hindrance or annoyance.
 - There is an obstruction of a public space or public service that may cause a hazard.
 - Conditions are being presented that are a danger to, or are injurious to adequate health.
 - Relevant codes and/or standards are not being adhered to.

In the case of public safety from buildings and/or temporary structures Council will consider compliance with the *Building Code of Australia (BCA)*, *National Construction Code* conditions of Development Consents issued, if approvals have not been obtained, as well as egress, fire safety and signage issues when considering the issue of an Order.

When considering the issue of an Order for unsightly or unhealthy premises, Council will assess the potential for fire hazards, as well as the ability for conditions to harbour pests or vermin. Furthermore, Council will consider the impact of a premises on the visual amenity of a locale.

In determining the potential for the issue of an Order for dumped rubbish and abandoned vehicles Council will consider if the object/s are causing an encroachment or obstruction of a public place, a danger or annoyance to the public, or has the potential to cause an environment or amenity issue.

In determining issues for food businesses or mobile food premises, Council will consider compliance with the *Food Act 2003* and associated standards/codes.

Local Orders Policy – PART 2 – Health and Safety

Overgrown vegetation on premises will be assessed against:

- the type of vegetation (native vegetation and horticultural plantings generally are not considered to constitute overgrown vegetation),
- the proximity of vegetation to a habitable building or high risk premises (such as a school, hospital, childcare centre, etc),
- if the volume of vegetation may present conditions suitable for the harbourage of vermin or pests (including snakes, rats, mice, etc),
- if the vegetation is of a type that will render the land unsafe or unhealthy,
- if the vegetation presents any type of fire risk.

In assessing the issue of an Order for onsite septic systems and connection to sewer, Council will consider if there is a viable connection to sewer point within 75 metres from the premises, if the existing system presents a risk to the health of persons or the environment, if the existing system is operating properly, if there is an existing approval to operate the system, and if the conditions of any approval to operate are being adhered to.

Where systems do not meet the terms of Council's **On-site Sewage Management Policy**, or the terms of relevant codes and/or Australian Standards, Council may consider issuing an Order to bring a system into compliance.

Council will require connection to sewer where it is available within 75 metres from a premises.

When considering the issue of an Order for a private swimming pool or spa, Council will consider if there is a current certificate of compliance for the swimming pool, the pool requires a child resistant barrier, fencing, signage, or other requirements under relevant standards and codes. Furthermore, Council will consider any deficiencies in existing infrastructure to meet relevant Australian Standards.

NOTE – Legislation regarding swimming pools (both indoor and outdoor) does not apply to pools situated on Crown Lands or those occupied by a public authority. Australian Standard 1926 can be referenced for requirements of swimming pool safety.

In considering the issue of an Order for a commercial swimming pool, Council will consider the frequency and results of water quality testing, record keeping for testing, general cleanliness, the availability of on-site water quality testing equipment and the accuracy of such equipment and record keeping.

Unclean and untidy premises will be assessed against the following in Council considering the issue of an Order:

- accumulation of any rubbish,
- presence of bed-bugs, bird roosts or other pests or vermin on the premises,
- waste not being appropriately stored or removed from the premises,
- existence of broken glass,
- presence of accumulated building materials, abandoned vehicles, organic materials or vegetation,
- breeding grounds for mosquitoes, rats, pigeons, snakes or any other perceived pest.

Unhealthy buildings can present significant hazards to the occupier of a premises, as well as visitors and any adjoining premises or lands. In considering the issue of an Order for unhealthy buildings Council will consider the following:

- Fire damage,
- Potential for structural deficiencies or collapse of building,
- Defective ceilings, floors, stairs, walls, frames or finishing materials,
- Awning safety overhanging a public place,
- Dampness in walls and other internal cavities of a building,
- Lack of a healthy water supply,
- Lack of basic amenities including (but not limited to) kitchen, toilet, laundry and provision of hot and cold water,
- Safety features (such as balustrades) have deteriorated to present a hazard to persons and no longer meet the requirements of the BCA, and/or no longer meet the requirements of relevant codes and/or standards,
- Broken windows, and/or lack of openable windows,
- Plumbing installations (waste disposal) that do not meet relevant codes or standards, or that present a hazard to human health or the environment.



PART 3 – COMPLIANCE WITH APPROVALS



Local Orders Policy – PART 3 – Compliance with Approvals

ORDER	TO DO WHAT? <i>Local Government 1993</i>	IN WHAT CIRCUMSTANCES?	TO WHOM?
Order 5	To take such action as is necessary to bring into compliance with relevant standards or requirements set or made by or under this Act or under the <i>Local Government Act 1993</i>	Failure to comply with relevant standards or requirements set or made by or under this Act or the <i>Local Government Act 1993</i>	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 <i>Home Building Act 1989</i> 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 Owner or occupier of the land
Order 8	To identify a premises with such numbers or other identification in such a manner as is specified in the order	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	Owner or occupier of the land
Order 30	To comply with an approval	The approval is not being complied with	Person entitled to act on the approval or a person acting otherwise than in compliance with an approval
Order 1	Environmental Planning and Assessment Act 1979 Stop Use Order Cease using a premises for the purpose specified in the order	(a) Premises are being used for a purpose that is prohibited. (b) Premises are being used for a purpose for which development consent is required but has not been obtained. (c) Premises are being used in contravention to conditions of a development consent Premises are being used— • for a prohibited purpose, or • for a purpose for which a planning approval is required but has not been obtained, or • in contravention of a planning approval. Building is being used— • Inconsistently with its classification under this Act or the <i>Local Government Act</i>	Owner of the premises, or the person by whom the premises are being used for the purpose specified in the order • The owner of premises or building • The person using the premises or building

Local Orders Policy – PART 3 – Compliance with Approvals

ORDER

TO DO WHAT?

Environmental Planning and Assessment Act 1979

To demolish or remove a building

Stop Work Order

To stop building work or subdivision work carried out in contravention of the EP & A Act, 1979.

IN WHAT CIRCUMSTANCES?

Local Government Act 1993

- 1) Building is erected without prior development consent or is erected without prior development consent of a consent authority and a prior construction certificate in a case where both prior development consent and a prior construction certificate are required
- 2) Building is or is likely to become a danger to the public
- 3) Building is so dilapidated as to be prejudicial to its occupants or to persons of property in the neighbourhood
- 4) Building is erected without prior approval of council, in a case where prior approval was required under the Local Government Act 1919 or the Local Government Act 1993 when the erection of the building commenced

Building work or subdivision work is carried out—

- in contravention of this Act, or
- in a manner that would affect the support of adjoining premises.

Order 3

Not to demolish, or to cease demolishing a building

Demolish Works Order

To demolish or remove a building

- 1) Building is likely to be demolished without prior development consent of consent authority in a case where prior development consent is required
- 2) Building is being demolished without prior development consent of consent authority or otherwise than in accordance with prior development consent of consent authority in a case where prior development consent is required

A building—

- requiring approval under the *Local Government Act 1993* is erected without approval, or
- requiring a planning approval is erected without approval, or
- is or is likely to become a danger to the public, or
- is so dilapidated that it is prejudicial to persons or property in the neighbourhood, or
- is erected in contravention of this Act.

TO WHOM?

Owner of building

Owner of the land

Any person apparently engaged in the work

Owner of a building, person likely to demolish or person engaged in demolition

Owner of building or, if the building is situated wholly or partly in a public place, the person who erected the building

Order 8

Evacuate Premises Order

Not to conduct, Evacuate premises or to cease conducting, an activity on premises (being an activity that is, or is capable of being, the subject of a development consent, whether or not the activity is the subject of a development consent)

Order 12

To do such things as are specified in the order to restore premises to the condition in which they were before building was unlawfully erected or before work was unlawfully carried out

Repair or Remove Works Order

To repair or remove a building in a public place

Order 13

To do such things as are necessary to bring into compliance with relevant development standards any building or part of a building that has been unlawfully erected

Complete Works Order

To complete authorized works under a planning approval within a specified time

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

A person who has failed to comply with a Stop Use Order issued because the use constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety.

- (a) Building has been unlawfully erected, and an order No 2 has been given requiring the building to be demolished or removed
- (b) Work has been unlawfully carried out

The building is unlawfully situated wholly or partly in a public place.

Building has been unlawfully erected and does not comply with relevant development standards

The authorized works have commenced, but have not been completed, before the planning approval would (but for the commencement of the works) have lapsed.

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

The person to whom the Stop Use Order was given

The owner of the premises, any person entitled to act on a development consent or complying development certificate or any person acting otherwise than in compliance with a development consent or complying development certificate

Owner or occupier of the building or the person who erected the building.

The owner of a premises

The owner of the relevant land.

Remedy or Restrain Breach Order
To do or refrain from doing any act to remedy or restrain a breach of Division 5.2 (or an approval under that Division) or a breach of a consent for State significant development

The breach has occurred, is occurring or is likely to occur

The person who caused, is causing or is likely to cause the breach, or the person entitled to act on the approval or consent

Local Orders Policy – PART 3 – Compliance with Approvals

ORDER	TO DO WHAT?	IN WHAT CIRCUMSTANCES?	TO WHOM?
Order 15	To comply with a development consent	Development consent is not being complied with	Person entitled to act on the consent or person acting otherwise than in accordance with the consent
Order 16	To complete development that is subject to a development consent within such time (not being less than 12 months from the date of service of the order) as the consent authority considers reasonable, having regard to all relevant circumstances, including the nature of the development, and including, if the development is the subject of: (a) a proposed strata development contract referred to in the Strata Schemes (Freehold Development) Act 1973 or the Strata Schemes (Leasehold Development) Act 1986, or (b) a development contract registered with a community plan or precinct plan under the Community Land Development Act 1989, the proposals relating to the stages in which the development is to be effected	The development has been commenced within the period specified in section 95(1) but has not been completed within that period	The owner of the land to which the development consent applies
Order 17	Carry out works associated with a subdivision	There has been a failure to carry out the works in accordance with a development consent or an agreement made with the applicant for development consent	Person required to carry out works
Order 19	To cease carrying out specified building work or subdivision work	(a) Building work or subdivision work is being carried out in contravention of this Act (b) Building work or subdivision work is being carried out that affects the support of adjoining premises	Owner of land or any person apparently engaged in carrying out the building work or subdivision work

1.4 ASSESSMENT CRITERIA.

Tenterfield Shire Council is the consent authority for a range of development related matters. Council is also the Appropriate Regulatory Authority (ARA) for a range of building and development planning matters, including implementation of codes, standards and statutory regulations.

Council may take regulatory action to remedy development related matters where works are not in accordance with relevant regulations/codes/standards, where development has occurred without required consents or approval, where development has been undertaken in non-accordance with an issued consent, and where development has been carried out in areas that prohibit that type of development. Any of these situations may cause Council to issue an Order. Council will account for the following criteria when deciding if an Order should be issued for a compliance with an approval related issue:

Impact

- Actual or potential detrimental effect to the natural or built environment is perceived.
- There is an actual or potential health or safety risk to residents or the amenity of the locale.
- The stability of a structure is likely to become a danger to persons or adjoining structures.
- The stability of a structure is presenting a danger to persons or adjoining structures.
- There are inadequate measures in place to protect the health and safety of persons.
- There is an adverse impact on the environment and/or public health.

Unlawful activity

- Work is or has been carried out without required development consent, construction certificate, complying development certificate, approval, permission or licence.
- Work is or has been carried out not in accordance with an issued development consent, construction certificate, complying development certificate, approval, permission or licence.
- Work is or has been carried out in contrary to a planning instrument, including but not limited to the LEP.
- Work has been or is being carried out in non-accordance with a required code or standard.
- Work is or has been carried out in contrary to a statutory provision regulating a particular activity.

Demolition works can either be directed to cease, be undertaken by Council through the issuing of an Order, or buildings be reinstated as they were prior to demolition. Council will consider the following in determining the potential to issue an Order to undertake demolition works:

- Development consent was required for building works but not obtained, and the development has been undertaken in a zone in which that development is prohibited.
- Works have been undertaken and a structure constructed which does not meet relevant standards, regulations and/or codes including but not limited to the Building Code of Australia.
- Works have been undertaken without approval or development consent which are not exempt development, and are not sympathetic to the surrounding locale including but not limited to heritage areas and rural settings.
- Structure/s are unsightly and/or structurally inadequate.
- Council has tried to work through attaining possible approvals with the owner for works that have not attained development consent to no avail.

Or to cease undertaking demolition works:

- Works are not being carried out by a competent person.
- Development consent was required for demolition works but not obtained.
- The item is within a heritage conservation area, or is a listed heritage item.
- Demolition methods are inappropriate and/or there is the possibility of impacts upon adjoining lands, buildings or structures.
- Materials and matter such as dust, lead based paint, asbestos or other building refuse are not being contained or disposed of in an appropriate manner.

For unauthorised use where a structure has been completed and/or used without development consent or not in accordance with the conditions of a consent, Council will consider if the development is capable of attaining development consent, if the land use is permissible within the zone, if the development or structure is capable of supporting the proposed use, in determining the issue of an Order.

NOTE - Building works that are unauthorised may be assessed by Council on a case by case basis to determine if the issue of a building certificate is an option as opposed to demolition. Furthermore, development consent will be required to regularise use where it can be considered.

Where non-compliance with an approval or consent is noted, Council will consider the following criteria in determining the issue of an Order:

- If the works are inconsistent with an issued consent, certificate or approval and/or standard.
- If the work presents a non-compliance with regulation or a statutory standard, code, or Council policy.
- The degree of non-compliance such as an inconsequential technical breach.

In determining the applicability of the issue of an Order for identification of premises, Council will consider if there is duplication or inconsistency in street numbering, or difficulties in correctly identifying or locating a property, premises or business.



PART 4 – BUILDING FIRE SAFETY



Local Orders Policy – PART 4 – Building Fire Safety

ORDER

TO DO WHAT?

Environmental Planning and Assessment Act 1979

To do or refrain from doing such things as are specified in the order so as to ensure or promote adequate fire safety or fire safety awareness

Remove Advertising Order

To alter, remove or demolish an advertising structure

Order 10

To cease use of the premises or to evacuate the premises

Restore Works Order

To restore premises to the condition in which they were before unlawful building or other works occurred

Order 11

To leave the premises or to not enter the premises

Compliance Order

To comply with a planning approval for the carrying out of works

To do whatever is necessary so that any building or part of a building that has been unlawfully erected complies with relevant development standards

To carry out works associated with subdivision

IN WHAT CIRCUMSTANCES?

a) Provisions for fire safety or fire safety awareness are not adequate to prevent fire, suppress fire or prevent the spread of fire or ensure or promote the safety of persons in the event of fire
 b) Maintenance or use of the premises constitutes a significant fire hazard

The advertisement is—

- unsightly, objectionable or injurious to the amenity of any natural landscape, foreshore, public reserve or public place at or near where the advertisement is displayed, or
- displayed contrary to a provision made by or under this Act, or
- associated with a structure erected contrary to a provision made by or under this Act.

A person whom Order 6 or 8 is given has failed to comply with the order

An unauthorised building has been the subject of a Demolish Works Order or unauthorised works have been carried out.

A person whom Order 6 or 8 is given has failed to comply with the order

A planning approval has not been complied with.

Building has been unlawfully erected and does not comply with relevant development standards

Authorised subdivision works, or works agreed to by the applicant, have not been carried out.

TO WHOM?

Owner of premises or, in the case of a place of shared accommodation, the owner or manager

- The owner of premises displaying the advertisement or on which the associated structure is erected
- The person responsible for the display of the advertisement and erection of the associated structure

The persons to whom the Order No 6 or 8 was given

- The owner of the premises
- Any person entitled to act on a planning approval or acting in contravention of a planning approval

- In relation to work unlawfully carried out that was the deposit of material in a public place, the person responsible for unlawfully depositing material in a public place

Any person

The owner of the premises

Any person entitled to act on a planning approval, or acting in contravention of a planning approval

The owner of the premises

1.5 ASSESSMENT CRITERIA.

Tenterfield Shire possesses extremely strong heritage characteristics, which include a number of historic buildings spanning back over 150 years. This gives rise to a number of difficulties when applying current fire safety requirements for commercial premises. As a number of historic buildings are used as hotels, bed and breakfasts, shops and commercial purposes, there is a risk to the public and persons with respect to fire safety requirements that needs to be mitigated throughout the Shire.

Building Fire Safety programs aim to address any fire safety issues to protect the safety and lives of people who use the building, and protect any surrounding buildings in the event of a fire.

Fire safety measures are included in development application proposals and consents for new structures and buildings, however, may not be adequately addressed for existing and historical buildings.

NOTE – Any building that is not a single residential premises is required to have fire safety measures assessed annually, and have a formal Annual Fire Safety Statement presented to Council, the NSW Fire brigade, and displayed in a prominent position in the building. Building owners and occupiers should be aware of their obligations regarding fire safety measures.

In determining whether to issue an Order for a building fire safety issue, Council will consider:

- If the building is not a single residential premises, or is of a class of building that requires essential fire safety measures.
- If the building has inadequate fire safety measures in accordance with the requirements of the Building Code of Australia.
- If Council has addressed the implementation of essential fire safety measures via the issue of an Order, and these have not been addressed by the appropriate person, leading to a high risk to persons or surrounding buildings/structures.

NOTE – If a Fire Safety Order is not complied with within the specified timeframe, Council may issue a separate Order for the cessation of use of the building to ensure the protection of persons and human life.



PART 5 – ANIMALS



Local Orders Policy – PART 5 – Animals

ORDER	TO DO WHAT?	IN WHAT CIRCUMSTANCES?	TO WHOM?
Order 18	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	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, or (b) in the case of premises in a catchment district - birds or animals (being birds or animals that are suffering from a disease which is communicable to man or to other birds or animals) or pigs	Occupier of the premises
Sec. 10	Companion Animals Act 1998 Register a companion animal	Where a companion animal that is required to be registered is not registered, notice is given to the owner of the animal requiring the owner to register the animal within 28 days after the date the notice is given.	Owner of the dog or cat
Sec. 31	Nuisance Order (Cats)	Where a cat persistently makes a noise or the noise continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any other premise or where a cat repeatedly damages anything outside the property on which it is ordinarily kept	Owner of the cat
Sec. 18	Seizure of animal (Dogs)	An authorised officer before leaving the property where a dog on property is secured or seized, and the property is believed to be occupied by the dog's owner, must prepare a notice setting out why the dog has been secured or seized, and the method by which the dog has been secured, or the place to which it has been taken, as the case may be.	Occupier of the premises
Sec. 32	Nuisance Order (Dogs)	Where a dog is habitually at large, persistently barks or makes a noise that continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in another premise; repeatedly defecates outside the property; repeatedly chases or runs at any person or vehicle; endangers the health of any person and / or repeatedly causes substantial damage to anything outside the property on which it is kept	Owner of the dog
Sec. 34	Declaration of a dangerous or menacing dog	Where it displays unreasonable aggression or is a dog kept for hunting purposes. Owners may also voluntarily declare their pet as a dangerous dog	Owner of the dog
Sec. 58	Declaration of a restricted breed of dog	Where it is of the opinion (of Council) that a dog is of a breed or kind of dog referred to in section 55 (1) (a)-(d1), or is a cross-breed of any such breed or kind of dog. If a notice of intention to declare a dog to be a restricted dog is given under section 58A to the owner of the dog, the authorised officer who gave the notice (or any other authorised officer of the council) may, after the period of 28 days following the giving of the notice, declare the dog to be a restricted dog. It does not matter if the dog is ordinarily kept in another council's area	Owner of the dog

1.6 ASSESSMENT CRITERIA.

Companion animals are a great asset to people, providing health, wellbeing, social and mental benefits. However, where not appropriately managed, companion animals can have an impact on neighbourhoods and residents, the health and safety of people, as well as the environment. Furthermore, animal wellbeing can be affected through neglect and lack of care.

In determining the potential issue of an Order for animal related matters, Council will consider the following:

Amenity

- Animals are not contained within a property on a habitual or recurring basis.
- Animals have attacked or presented a nuisance or hazard to persons.
- Animals are leading to the presence of pests including ticks, fleas, vermin, mosquitoes or otherwise.
- Animals are dangerous or have displayed aggression.
- Keeping of animals is creating unsanitary and/or unhealthy conditions for people or for the animals.
- There is persistent uncontrolled animal noise that unreasonably interferes with the amenity of the surrounding area.
- The mix and number of animals is inappropriate for the location.
- Animals are being kept in non-accordance with Council's **Local Orders for the Keeping of Animals in Urban Areas of Tenterfield Shire** policy.

Environment

- Animals are presenting detrimental effects to the environment.
- Animals, or the keeping of animals, is presenting degradation of ecosystems.
- Keeping of animals is presenting potential water pollution issues through runoff, or runoff is affecting neighbouring properties.
- There is predation on local and/or native fauna from animals.

Wellbeing

- Conditions for the keeping of an animal is poor and/or neglectful.
- Animals display a lack of training and/or anxiety.
- Accommodation for the keeping of animals is poor and/or neglectful.
- Owners are neglecting to provide daily care.

NOTE – Council will not enter a private property to seize an animal for the purposes of attending to neglect or cruelty. In these instances, residents should contact the RSPCA for action to be taken.

Council has a comprehensive policy “**Local Orders for the Keeping of Animals in Urban Areas of Tenterfield Shire**” that deals with specific criteria for the keeping of animals in urban areas (including residential areas) within the Shire. Council will make reference to the details of the “**Local Orders for the Keeping of Animals in Urban Areas of Tenterfield Shire**” policy in determining the issue of an Order under this policy.

Council is not the appropriate regulatory authority for issues arising from apartment, shared housing or townhouse/strata development, where disputes between neighbours are apparent. In these cases the developments management should be contacted to resolve companion animal issues.

This part generally does not apply to rural lands or agricultural lands (land zoned RU1) under the Tenterfield Local Environmental Plan 2013. This does not however preclude Council from issuing an Order in exceptional circumstances.

NOTE – For prescriptive measures on the keeping of animals in urban areas, please refer to Council’s “Local Orders for the Keeping of Animals in Urban Areas of Tenterfield Shire” policy, which can be found on our website at www.tenterfield.nsw.gov.au

End note – Where there is inconsistency between any part of this local policy and any Act or Regulations, the inconsistent parts of this policy shall be void and the relevant statutory provisions shall prevail.

4. Policy Statement

Council is committed to effectively managing its legislative obligations in respect to animal management, public health and environmental management in such a way as to facilitate a safe and healthy environment, to improve the amenity of the LGA, and ensure good governance practices.

Council’s Local Orders Policy and subsequent Orders Schedule, outlines the circumstances that may warrant Council issuing an order.

5. Scope

The Local Orders Policy assists Tenterfield Shire Council in enacting its regulatory responsibilities in the areas of animal management (including keeping of animals), Public Health and Environmental Protection by specifying the criteria that Council must take into consideration in determining whether or not to give an order under Section 124 of the Local Government Act 1993.

6. Accountability, Roles & Responsibility

Elected Council

Councillors are elected representatives and comprise the governing body of Council. This governing body has the role of directing and controlling the affairs of the Council in accordance with the Local Government Act.

As councillors are members of the Council's governing body, they are required to perform civic duties and fulfil a leadership role for the community.

Chief Executive, Executive and Management Teams

The Chief Executive, Chief Corporate Officer, Open Spaces Regulatory & Utilities Manager, Planning & Development Services Manager, Regulatory provision and maintenance of procedures/protocols that support the Council's Policies.

Council Staff

Will provide administration support

7. Definitions

Order - An enforcement notice, order or direction given by Council that requires the recipient to take action within a specified time period. Orders are issued to rectify a situation that has public health, safety, environmental, amenity implications or to remediate unauthorised activities.

8. Related Documents, Standards & Guidelines

- Local Orders Schedule
- Development Control Plan
- Local Environmental Plan
- Food Premises Code
- Food Standards Code
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- Australian Standard 1926

9. Version Control & Change History

Version	Date	Modified by	Details
V1.0		Council	Adoption of Original Policy