



## 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.

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<b>Department</b>	The Office of the Chief Corporate
<b>Policy Custodian</b>	Manager Open Space, Regulatory & Utilities & Manager Planning & Development Services
<b>Superseded Documents</b>	23 August 2017 - Local Orders Policy 25 March 2015 – Local Orders Policy
<b>Related Legislation</b>	<ul style="list-style-type: none"> <li>• Local Government Act 1993</li> <li>• Local Government (General) Regulations 2005</li> <li>• Apiaries Act 1985</li> <li>• Companion Animals Act 1998</li> <li>• Companion Animals Amendment Act 2001 and 2006</li> <li>• Companion Animals Regulation</li> <li>• Environmental Planning and Assessment Act 1997</li> <li>• Exhibited Animals Protection Act 1986</li> <li>• Food Act 2003</li> <li>• Food Regulation 2015</li> <li>• Home Building Act 1989</li> <li>• National Parks and Wildlife Act 1974</li> <li>• Non-Indigenous Animals Act 1997</li> <li>• Public Health Regulation 2012</li> </ul>

## Delegations of Authority

- |   |
|---|
| <ul style="list-style-type: none"> <li>• Public Health (General) Regulation 2002</li> <li>• Protection of the Environment Operations Act 1997</li> <li>• Swimming Pool Act 1992</li> <li>• Water Management Act 2000</li> </ul>           |
| <ul style="list-style-type: none"> <li>• Chief Executive,</li> <li>• Chief Corporate Officer</li> <li>• Manager Open Spaces, Regulatory and Utilities</li> <li>• Manager Planning &amp; Development Services</li> <li>• Ranger</li> </ul> |

## 1. Overview

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

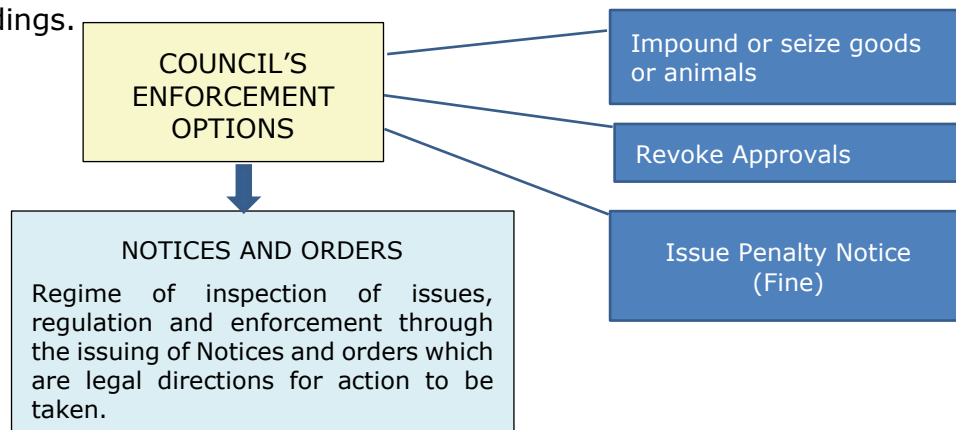
This policy has been drafted in line with Parts 2 and 3, and Section 159 of the *Local Government Act 1993*.

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 clause 41 of Schedule 5 of the *Environmental Planning and Assessment Act 1979*.**

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

<b>ORDER NUMBER</b>	<b>DESCRIPTION OF ORDER</b>
<b><i>Local Government Act 1993</i></b>	
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
<b>Environmental Planning and Assessment Act 1979</b>	
Order 1	Cease use of premises for purpose specified
Order 2	Stop building or subdivision work
Order 3	To demolish or remove a building
Order 4	To stop demolishing, or not to demolish, a building
Order 5	To repair or make structural alterations to a building
Order 6	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 or to cease conducting an activity on a premises
Order 9	Exclusion order to leave premises or not enter premises
Order 10	To restore premises to condition they were before unlawful works occurred.
Order 11	Bring unlawful development into compliance with approval and/or standards.
Order 12	To repair or remove a building in a public place.
Order 13	To complete authorized works under a planning approval.
Order 14	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 development.
<b>Protection of the Environment Operations Act 1997</b>	
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
<b>Public Health Act 2010</b>	
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

<b>Food Act 2003</b>	
Section 45	Notification of seizure of goods
Section 58	Improvement notice
Section 60	Prohibition order
<b>Noxious Weeds Act 1993</b>	
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
<b>Impounding Act 1993</b>	
Section 15/16	Impound motor vehicle, animal or other article
Section 20	Sale or disposal of impounded items
<b>Companion Animals Act 1998</b>	
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
<b>Swimming Pools Act 1992</b>	
Section 23	To bring a pool into compliance
<b>Roads Act 1993</b>	
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
Clause 99	<b>Repair or maintain water supply work on or over a public</b>
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.

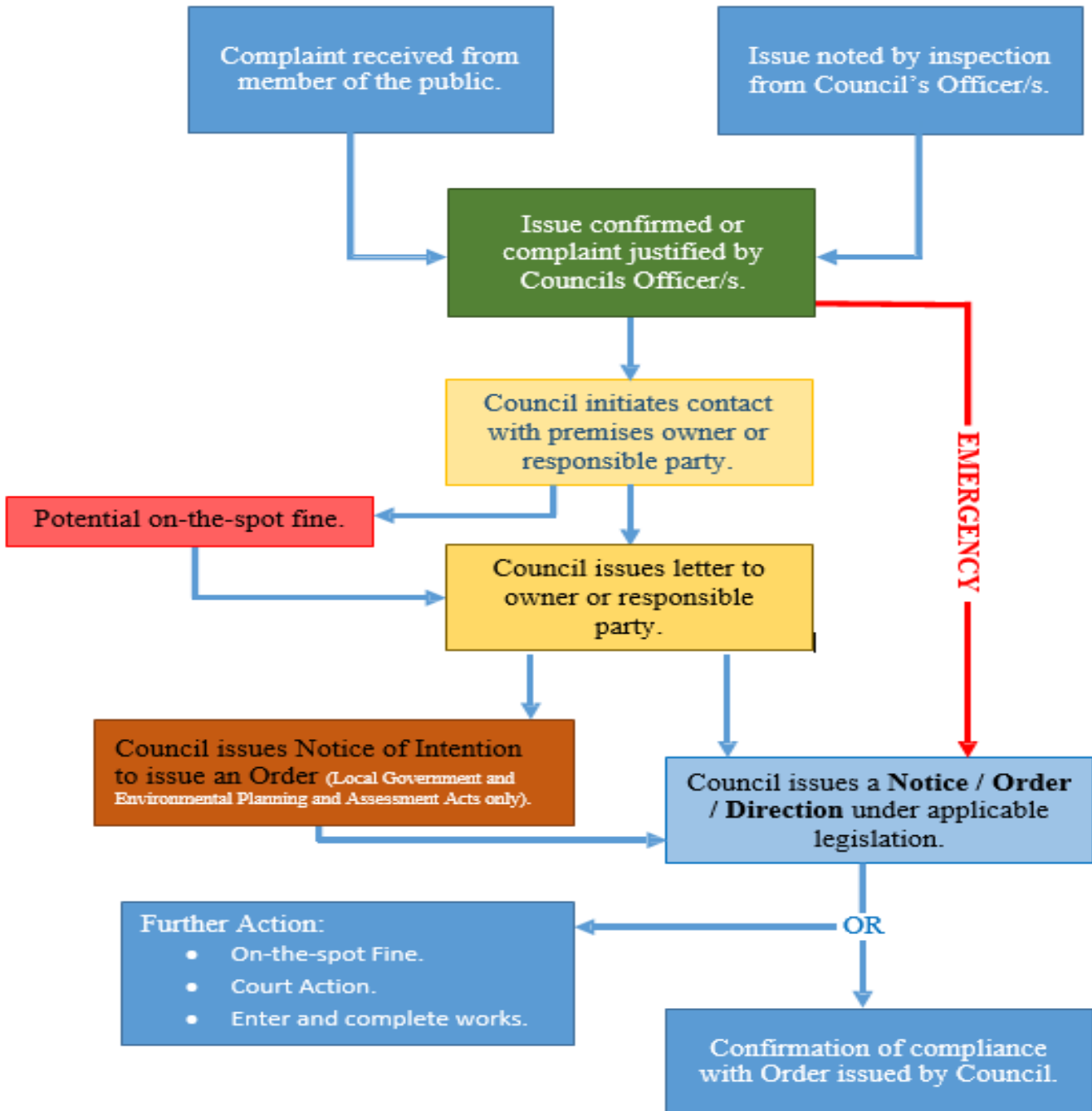
Council can also recover reasonable costs to give effect to an order under section 10.2 *Environmental Planning & Assessment Act*; section 104 *Protection of the Environment Operations Act* and section 26 *Noxious Weeds Act*. Under the *Protection of the Environment Operations Act*, the cost compliance 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? <i>Local Government Act 1993</i>	IN WHAT CIRCUMSTANCES?	TO WHOM?
<b>Order 1</b>	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
<b>Order 3</b>	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
<b>Order 10</b>	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
<b>Order 11</b>	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"> <li>• drainage, or</li> <li>• drainage works, or</li> <li>• 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></li> </ul>	Owner or occupier of land
<b>Order 12</b>	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
<b>Order 19</b>	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
<b>Order 27</b>	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"> <li>(a) is causing or is likely to cause an obstruction or encroachment of or on the public place and the obstruction or encroachment is not authorised by or under any Act, or</li> <li>(b) is causing or is likely to cause danger, annoyance or inconvenience to the public</li> </ul>	Person causing obstruction or encroachment or owner or occupier of land from which the object or matter emanates or is likely to emanate
<b>Order 28</b>	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"> <li>(a) by excavation or removal of material from or adjacent to the public place, or</li> <li>(b) by a work or structure, or</li> <li>(c) by surface drainage or irrigation</li> </ul>	(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
<b>Order 29</b>	To alter or repair a work or structure on, over or under a public place	It is in the public interest to do so	Owner of the work or structure

ORDER	TO DO WHAT?	IN WHAT CIRCUMSTANCES?	TO WHOM?
<b>Environmental Planning and Assessment Act 1979</b>			
<b>Order 5</b>	<b>Repair Order</b> To repair or make structural alterations to a building	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.	Owner of the building
<b>Order 14</b>	<b>Remedy or Restrain Breach Order</b> 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 cause, is causing or is likely to cause the breach, or the person entitled to act on the approval or consent.
<b>Protection of the Environment Operations Act 1997</b>			
<b>Sec. 91</b>	Direction to take Clean Up action (Clean Up notice)	Where Council reasonably suspects that a pollution incident has occurred or is likely to occur	Occupier or premises, or person suspected of causing, or having caused a pollution incident
<b>Sec. 96</b>	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	Occupier of the premises, or person carrying on the activity
<b>Sec. 135B</b>	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 of the premises
<b>Sec. 144</b>	Direction to cease using the premises as a waste facility	Where Council reasonably suspects that the premises is being used for storage, treatment, processing, sorting or disposal of waste without approval	Owner of the premises
<b>Sec. 264</b>	Noise Control notice	Where the emission of noise, when measured at any specified point, is in excess of a specified level	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?	IN WHAT CIRCUMSTANCES?	TO WHOM?
<b><i>Protection of the Environment Operations Act 1997</i></b>			
<b>Sec. 276</b>	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
<b><i>Noxious Weeds Act 1993</i></b>			
<b>Sec. 18</b>	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
<b>Sec. 18A</b>	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
<b>Sec. 20</b>	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
<b>Sec. 45</b>	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? <i>Local Government Act 1993</i>	IN WHAT CIRCUMSTANCES?	TO WHOM?
<b>Order 7</b>	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 Hole or waterhole is, or may become, dangerous to life	Owner or occupier of the land
<b>Order 9</b>	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
<b>Order 15</b>	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
<b>Order 16</b>	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
<b>Order 17</b>	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
<b>Order 20</b>	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
<b>Order 21</b>	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
<b>Order 22</b>	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
<b>Order 22A</b>	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
<b>Order 24</b>	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
<b>Order 25</b>	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?
<b><i>Environmental Planning and Assessment Act 1979</i></b>			
<b>Order 4</b>	<b>Stop Demolition Order</b> To stop demolishing, or not demolish, a building	Demolition requiring a planning approval is being carried out, or would be carried out, without approval or in contravention of an approval.	The owner of premises
<b>Order 7</b>	<b>Public Safety Order</b> 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	(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	Owner or occupier of land
<b>Order 9</b>	<b>Exclusion Order</b> To leave premises or not to enter premises	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.	Any person
<b><i>Impounding Act 1993</i></b>			
<b>Sec. 16</b>	Motor vehicle may be impounded	Motor vehicle which is abandoned or unattended may be impounded. Council gives notice of impoundment unless removed within a specified timeframe	Owner of vehicle and/or person/s who claim interest
<b>Sec. 20</b>	Items impounded may be sold or disposed of	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	Owner of vehicle and/or person/s who claim interest
<b><i>Swimming Pools Act 1992</i></b>			
<b>Sec. 23</b>	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?	IN WHAT CIRCUMSTANCES?	TO WHOM?
<b>Food Act 2003</b>			
<b>Sec. 45</b>	Notification of seizure	Upon seizure of an item under the <i>Food Act 2003</i>	Person from whom the item was seized
<b>Sec. 58</b>	Improvement Notice	<ul style="list-style-type: none"> <li>(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</li> <li>(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</li> <li>(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</li> <li>(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</li> </ul>	Proprietor of the business / owner of the vehicle
<b>Sec. 60</b>	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
<b>Public Health Act 2010</b>			
<b>Sec. 33</b>	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?
<b>Sec. 42</b>	Improvement Notice	<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"> <li>(a) the premises, or a regulated system, public swimming pool or spa pool at those premises, does not comply with an enforceable requirement, or</li> <li>(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</li> </ul>	Occupier
<b>Sec. 44</b>	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
<b>Sec. 45</b>	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"> <li>(i) the occupier has not complied with an improvement notice within the time required under the notice, and</li> <li>(ii) the issue of the prohibition order is necessary to prevent or mitigate a serious risk to public health, or</li> </ul> <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
<b>Sec. 91</b>	Landowner to provide support for a public road as part of their duty of care	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
<b>Sec. 93</b>	Fill in an excavation	The excavation threatens the stability of the public road	Owner of any land adjoining a public road

### Public Health Act 2010

### Roads Act 1993

## Local Orders Policy – PART 2 – Health and Safety

ORDER	TO DO WHAT?	IN WHAT CIRCUMSTANCES?	TO WHOM?
<b>Roads Act 1993</b>			
<b>Sec. 95</b>	Remove windblown sand, soil or other matter	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	Owner of land
<b>Sec. 96</b>	Alter a fence, provide floodgates in any such fence, or make repairs to a fence	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	Occupier of any land in the vicinity of a public road
<b>Sec. 97</b>	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.	Where placement of utility services are required and the public road contains conduits for the carriage of utility services across the road	Any person who is entitled to place utility services in, on or over the road
<b>Sec. 98</b>	Alter the work or structure or the location of work or structure	When the roads authority requires the alteration of work located in, on or over public roads	A public authority that is an occupier of land, or the occupier of land
<b>Sec. 99</b>	Direction to repair or maintain any water supply work or drainage work	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	Irrigation corporation, a private irrigation board, a private drainage board or a private water trust
<b>Sec. 100</b>	Direction to repair or replace the bridge or level crossing (or, in the case of an overbridge, the road under the bridge)	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	Owner of the railway
<b>Sec. 101</b>	Direction to restore a public road to its previous condition	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	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 *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.

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?	IN WHAT CIRCUMSTANCES?	TO WHOM?
<b>Local Government 1993</b>			
<b>Order 5</b>	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
<b>Order 8</b>	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	
<b>Order 30</b>	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
<b>Environmental Planning and Assessment Act 1979</b>			
<b>Order 1</b>	<b>Stop Use Order</b> Cease using a premises for the purpose specified in the order	Premises are being used— <ul style="list-style-type: none"> <li>• for a prohibited purpose, or</li> <li>• for a purpose for which a planning approval is required but has not been obtained, or</li> <li>• in contravention of a planning approval.</li> </ul> Building is being used— <ul style="list-style-type: none"> <li>• inconsistently with its classification under this Act or the <i>Local Government Act 1993</i>, and</li> <li>• in a manner that constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety, and</li> <li>• in a manner that is not regulated or controlled under any other Act by a public authority.</li> </ul> Premises are being used for an activity (that would or would be likely to require planning approval) that— <ul style="list-style-type: none"> <li>• constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety, and</li> <li>• is not regulated or controlled under any other Act by a public authority.</li> </ul>	Owner of the premises, or the person by whom the premises are being used for the purpose specified in the order <ul style="list-style-type: none"> <li>• The owner of premises or building</li> <li>• The person using the premises or building</li> </ul>

## Local Orders Policy – PART 3 – Compliance with Approvals

ORDER	TO DO WHAT?	IN WHAT CIRCUMSTANCES?	TO WHOM?
<b>Environmental Planning and Assessment Act 1979</b>			
<b>Order 2</b>	<b>Stop Work Order</b> To stop building work or subdivision work carried out in contravention of the <i>EP &amp; A Act, 1979</i> .	Building work or subdivision work is carried out— <ul style="list-style-type: none"> <li>• in contravention of this Act, or</li> <li>• in a manner that would affect the support of adjoining premises.</li> </ul>	Owner of the land  Any person apparently engaged in the work
<b>Order 3</b>	<b>Demolish Works Order</b> To demolish or remove a building	A building— <ul style="list-style-type: none"> <li>• requiring approval under the <i>Local Government Act 1993</i> is erected without approval, or</li> <li>• is or is likely to become a danger to the public, or</li> <li>• is so dilapidated that it is prejudicial to persons or property in the neighbourhood, or</li> <li>• is erected in contravention of this Act.</li> </ul>	Owner of building or, if the building is situated wholly or partly in a public place, the person who erected the building
<b>Order 8</b>	<b>Evacuate Premises Order</b> Evacuate premises or to cease conducting, an activity on premises.	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.	The person to whom the Stop Use Order was given
<b>Order 12</b>	<b>Repair or Remove Works Order</b> To repair or remove a building in a public place	The building is unlawfully situated wholly or partly in a public place.	Owner or occupier of the building or the person who erected the building.
<b>Order 13</b>	<b>Complete Works Order</b> To complete authorized works under a planning approval within a specified time	The authorized works have commenced, but have not been completed, before the planning approval would (but for the commencement of the works) have lapsed.	The owner of the relevant land.
<b>Order 14</b>	<b>Remedy or Restrain Breach Order</b> 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

### 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?	IN WHAT CIRCUMSTANCES?	TO WHOM?
<b><i>Environmental Planning and Assessment Act 1979</i></b>			
<b>Order 6</b>	<p><b>Remove Advertising Order</b> To alter, remove or demolish an advertising structure</p>	<p>The advertisement is—</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• displayed contrary to a provision made by or under this Act, or</li> <li>• associated with a structure erected contrary to a provision made by or under this Act.</li> </ul>	<ul style="list-style-type: none"> <li>• The owner of premises displaying the advertisement or on which the associated structure is erected</li> <li>• The person responsible for the display of the advertisement and erection of the associated structure</li> </ul>
<b>Order 10</b>	<p><b>Restore Works Order</b> To restore premises to the condition in which they were before unlawful building or other works occurred</p>	<p>An unauthorised building has been the subject of a Demolish Works Order or unauthorised works have been carried out.</p>	<ul style="list-style-type: none"> <li>• The owner of the premises</li> <li>• Any person entitled to act on a planning approval or acting in contravention of a planning approval</li> <li>• 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</li> </ul>
<b>Order 11</b>	<p><b>Compliance Order</b> To comply with a planning approval for the carrying out of works</p> <p>To do whatever is necessary so that any building or part of a building that has been unlawfully erected complies with relevant development standards</p> <p>To carry out works associated with subdivision</p>	<p>A planning approval has not been complied with.</p> <p>Building has been unlawfully erected and does not comply with relevant development standards</p> <p>Authorised subdivision works, or works agreed to by the applicant, have not been carried out.</p>	<p>The owner of the premises</p> <p>Any person entitled to act on a planning approval, or acting in contravention of a planning approval</p> <p>The owner of the premises</p>

### 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?
<b>Local Government Act 1993</b>			
<b>Order 18</b>	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
<b>Companion Animals Act 1998</b>			
<b>Sec. 10</b>	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
<b>Sec. 31</b>	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
<b>Sec. 18</b>	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
<b>Sec. 32</b>	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
<b>Sec. 34</b>	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
<b>Sec. 58</b>	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](http://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	25/03/15	Council	Adoption of Original Policy (Res No. 70/15)
V2.0	23/08/17	Council	Review/Amended Policy (Res No. 168/17)
V3.0	25/03/20	Council	Review/Amended Policy (Res No. 253/20)
V4.0	21/12/22	Council	Re adopted Policy (Res No. 248/22)