

## ENVIRONMENT

### 4.1 WINGECARRIBEE'S DISTINCT AND DIVERSE NATURAL ENVIRONMENT IS PROTECTED AND ENHANCED

Adoption Date:	14 February 2018
Council Reference:	MN23/18
Policy Owner:	Manager Environment and Sustainability, Environment and Sustainability Branch
Next review date:	November 2020
File Reference:	201/5.1
Related Policies/Legislation:	<i>Local Government Act 1993</i> Asbestos Policy
Superseded Policy:	Local Orders Policy (Order 21) v.2 Feb 2016

## OBJECTIVES

The objectives of this policy are to:

- specify the criteria that Council will consider when determining whether to issue an Order Number 21 under section 124 of the *Local Government Act 1993* to ensure that premises or land are placed or kept in a safe or healthy condition
- ensure consistency and fairness in the manner in which Council deals with issuing orders
- make Council's policy and requirements for orders readily accessible and understandable to the public
- establish a system which can effectively resolve disputes and conflicts as they arise
- provide a framework which will allow Council to prioritise workload.

## POLICY STATEMENT

This Local Orders Policy (Order 21) concerns premises or land which is not in a safe and healthy condition under section 124 of the *Local Government Act 1993*. Under this provision an Order can be issued to require an owner or occupier of land, to do, or refrain from doing, certain things to ensure the land or premises are placed or kept in a safe or healthy condition. This policy has been written in accordance with section 159 of the *Local Government Act 1993*.

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



# Local Orders Policy (Order 21)

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

## 1.1 Overgrown Vegetation

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

- a) is harbourage for vermin or noxious pests (evidence can include sightings, faeces, nests, runs and eggs); or
- b) is likely to be harbourage for vermin or noxious pests (such vegetation should be consistently thick to an average height of 600mm and covering a sufficient area of vacant land or the unbuilt portion of land, to have the potential to harbour vermin or noxious pests). It does not follow from this that an uncleared or regenerated bush block comprising of mainly indigenous vegetation would be considered likely to be a harbourage for vermin or noxious pests.

### Note:

All bush fire hazard complaints received by Council are referred to the NSW Rural Fire Service for their determination. The NSW Rural Fire Service is the lead agency for bush fire hazards (under *Rural Fires Act 1997*).

Vermin does not include native animals.

Weeds are covered under the *Biosecurity Act 2015*.

## 1.2 Accumulation of Materials, Refuse, Manure or Other Hazardous Items

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

- a) provide harbourage for vermin or noxious pests (evidence may include faeces, sightings, nests, runs and eggs); or
- b) are likely to attract, or provide harbourage for vermin or noxious pests; or
- c) aid the breeding of flies, mosquitoes, other insects or animals that are recognized as potentially carrying human diseases; or
- d) are likely to be releasing gas/dust/vapour/liquid or other emission which could be considered harmful to humans and/or the environment; or
- e) are suspected to contain asbestos and are being handled (including, but not limited to, cutting, sanding, breaking, removing) or stored in a manner inconsistent with NSW WorkCover and/or NSW Environmental Protection Authority guidelines and is considered likely to lead to the release of fibres and/or dust to present a threat to health; or
- f) the material is considered to be hazardous.



# Local Orders Policy (Order 21)

## Notes:

Council will not consider inert items that are stacked in a safe, tidy manner as being likely to attract, or provide harbourage to vermin or noxious pests when the stacked items:

- i) facilitate the clearing of vegetation,
- ii) reduce the potential for harbourage of vermin or noxious pests, and/ or
- iii) place the property in a safe and healthy condition

Material suspected as being asbestos is assumed to be asbestos, unless the recipient, or proposed recipient, of an Order can prove otherwise.

## **1.3 Breeding and/or Infestation of Disease Vectors or Noxious Pests**

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

- a) they are infested with vermin, flies, mosquitoes, other insects or animals that are recognized as potentially carrying human diseases; or
- b) conditions are aiding the breeding of vermin, flies, mosquitoes, other insects or animals that are recognized as potentially carrying human diseases; or
- c) noxious pests are breeding on or infesting a premises.

## **1.4 Inappropriate Handling of Sewage**

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

- a) the plumbing on the premises is failing, leading to the discharge of sewage or inappropriate handling of sewage; or
- b) a grey water diversion device and/or grey water treatment system is currently operated on the premises and such a device or system is failing to meet the requirements of the NSW Guidelines for Greywater Reuse In Sewered, Single Household Residential Premises; or
- c) the premises are currently serviced by an on-site sewage management system (OSSM) and that system is failing to meet the requirements of:
  - i) the conditions of consent / approval in any approval to install or operate the on-site system, or
  - ii) the requirements of the Environment and Health Protection Guidelines: On-site Sewage Management for Single Households.

## **1.5 Unsafe Building, Structure or Item or Unhealthy Conditions in a Building or Structure**

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

- a) a building contravenes the structural or health and amenity provisions of the Building Code of Australia to an extent which causes it to be unsafe or unhealthy; or
- b) a wall, structure, or item is considered dangerous by an authorised Council officer; or



# Local Orders Policy (Order 21)

- c) a wall, structure, or item has friable or exposed asbestos in dilapidated condition to an extent which causes it to be unsafe or unhealthy; or
- d) a sleeping accommodation contravenes public health requirements (as determined by the Public Health Regulation 2012); or
- e) a designated drinking water supply system is contaminated or is unfit for human consumption; or
- f) a food premises contravenes health and safety requirements of Chapter 3 of the Australia New Zealand Food Standards Code.

## Notes:

Building matters of a trivial nature won't be handled through this Local Orders process. Conditions must pose a danger to public or tenants. Allegations of effects of unhealthy conditions may need to be verified by a medical doctor's report.

Wingecarribee Shire Council's Asbestos Policy has further details and actions applicable for asbestos in unsafe or unhealthy buildings.

**1.6 Any other situation which is deemed by the General Manager as being likely to pose an immediate danger to health or safety to the greater public.**

## **2. Remedial Action**

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

- a) Remove, cut, slash, mow, prune, trim, or thin out overgrown vegetation on the property.
- b) Removal of waste material, and any unwanted material, and dispose of at a suitably licensed waste facility.
- c) Store materials in a safe, stable, secure, and tidy manner which facilitates the clearing of vegetation, reduces the potential for harbourage of vermin or noxious pests, and places the property in a safe and healthy condition.
- d) Eradicate disease vectors or noxious pests that are harbouring on the property.
- e) Remove items or material which are aiding the harbourage and/or breeding of disease vectors or noxious pests.
- f) Undertake pest control measures (e.g. engage a pest controller) to manage disease vectors, vermin, or noxious pests that may be present on the site and remove the potential for their harbourage.
- g) Clean the premises, or aspects of the premises, to place it in a healthy condition.
- h) De-sludging of OSSM tanks.
- i) Servicing of an Aerated Waste Water Treatment System.
- j) Repair, replacement or upgrade of the defective OSSM tanks, pipes or disposal systems.



# Local Orders Policy (Order 21)

- k) Renewal or repair of defective sewerage service pipes, or the clearing of choked sewerage service pipes.
- l) Clean, disinfect, cease to use or advise people not to use a designated drinking water system.
- m) Provide an alternative drinking water supply.
- n) Repair, replacement or upgrade of the defective Greywater Diversion Device or associated disposal system.
- o) Undertake any necessary maintenance or works to ensure friable or exposed asbestos in buildings does not pose a health risk.
- p) Submit details specifying particulars of works needed to be undertaken and carried out to satisfy a certain standard or requirement.
- q) Submit a Development Application or section 68 application and gain approval for the undertaking of certain remedial actions.

## Note:

Remedial action will not cover any vegetation or animal that is protected by the *Biodiversity Conservation Act 2016*, *Local Land Services Act 2013*, *Environment Protection and Biodiversity Conservation Act 1999*, Wingecarribee Shire Council's Local Environment Plan 2010 and associated Development Control Plans, unless the action is allowable under the relevant legislative instrument or plan.

## **3. Notice of intent**

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

## **4. Making representations**

Any person in receipt of a notice of intent may make representations as to why the order should not be given, the terms of the order, or the period for compliance on the proposed order within 14 days. This does not apply in emergency situations in accordance with section 129 of the *Local Government Act 1993*.

## **5. Hearing and consideration of representations**

An independent review panel or officer of Council will hear and consider any representation made and either:

- a) give the order as proposed or
- b) give the order with modifications or
- c) not give the order.

This does not apply in emergency situations in accordance with section 129 of the *Local Government Act 1993*.



## 6. Issuing of an order

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

The order will be issued by the Group Manager Planning, Development and Regulatory Services, or any other delegated officer, on the owner or occupier of the land or premises.

## 7. Right of appeal

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

## 8. Failure to comply with order

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

A penalty notice may be issued for failure to comply with the remedial action outlined in an order. After issuing a penalty notice, Council may proceed to issue a new order and/or a new penalty notice for any ongoing offence(s).

If a person fails to comply with the terms of an order, Council may commence proceedings in either the Land and Environment Court or Local Court, or do such things as necessary or convenient to give effect to the terms of the order, in accordance with section 678 of the *Local Government Act 1993*.

---

## SCOPE

This policy applies to all land across the Wingecarribee Shire Council Local Government Area. Council may serve an order to an owner or occupier of land or premises when the land or premises are not in a safe or healthy condition.

This policy does not affect the power of Wingecarribee Shire Council to give an order, notice, or direction under the authority of other legislation.





## DEFINITIONS

- a) Built Up Urban Area includes all land use zones under the Wingecarribee LEP 2010 with the exception of the following:
- RU1 Primary Production;
  - RU2 Rural Landscape;
  - RU3 Forestry;
  - RU4 Primary Production Small Lots;
  - RE1 Public Recreation;
  - E1 National Parks and Nature Reserves;
  - E2 Environmental Conservation;
  - E3 Environmental Management; and
  - E4 Environmental Living.
- b) Noxious Pests include European wasps, fire ants or any other pest determined by the Group Manager Planning, Development and Regulatory Services (in consultation with the Department of Primary Industry or any other relevant Government Authority), but does not include any native fauna.
- c) Overgrown Vegetation does not include any vegetation that is protected by the *Biodiversity Conservation Act 2016*, *Environment Protection and Biodiversity Conservation Act 1999*, Wingecarribee Shire Council's Local Environment Plan 2010 or associated Development Control Plans. Overgrown vegetation does not include a commercial crop.
- d) Sewage is taken to be either grey water or black water as defined in NSW Health Greywater Reuse Policy. Greywater consists of domestic wastewater excluding toilet waste and may include wastewater arising from a hand basin, kitchen, bath, shower and laundry. Blackwater is wastewater from toilets or urinals.
- e) Vermin are wild animals that are recognized as potentially carrying human diseases, for examples rodents. Vermin does not include any native fauna.

## RESPONSIBILITIES

Responsibilities for implementing this policy are shared between Councillors, Executive and staff as follows:

Councillors:

- Provide leadership in complying with legislative requirements.

Executive:

- Integrate the Local Orders Policy with the other Council policies and compliance processes.



# Local Orders Policy (Order 21)

## Council Staff:

- Develop, review and maintain effective local orders policy and implementation procedures.
- Comply with the Local Orders Policy and related compliance procedures.
- Assist the community in understanding the Local Orders Policy requirements and process.

---

## PERFORMANCE MEASURES

The success of this policy will be measured by:

- a) Awareness of residents of their rights and responsibilities in keeping premises or land in a safe and healthy condition.
- b) Reduced complaints from land or premises in an unsafe or unhealthy condition.
- c) Reduced caution and infringement notices issued by regulatory staff.

---

## APPROVED BY:

**WINGECARRIBEE SHIRE COUNCIL**

