

TITLE

This local Policy is the Ashfield Municipal Council Local Orders Policy 1999 (LOP).

STATUS AND PURPOSE OF THE POLICY

This Local Orders Policy (LOP) is prepared and adopted under Chapter 7, Schedule 7 Part 3 of the Local Government Act 1993 ("the Act") and the Local Government (Orders) Regulation.

The purpose of the LOP is to supplement provisions of the Act and the Local Government (Orders) Regulation 1999 by:

Specifying the Criteria which (if the policy were to be adopted) the council must take into consideration in determining whether or not to give an order under Sections 124 or 125 of the Local Government Act.

GENERAL AIMS OF THE POLICY

The Policy aims:

- ◆ to promote an integrated framework for dealing with orders
- ◆ to ensure consistency and fairness in the manner in which the Council deals with orders
- ◆ to encourage participation of the local community in Council criteria for orders.
- ◆ to make the Council's policies and requirements for orders readily accessible and understandable to the public.
- ◆ to assist Council to fully pursue its charter under Section 8 of the Act.
- ◆ apply common or consistent requirements and procedures to orders
- ◆ to use straight forward English and explanatory notes throughout the text of the policy
- ◆ to apply the principles of natural justice in the consideration of representation made by affected persons.

COMMENCEMENT OF THE POLICY

The LOP 1999 commences on 1 January 2000

The LOP 1999 was adopted by the Council on 21 December 1999 (Minute No. 304/99)

Adoption of the Policy was publicly notified in the Glebe and Inner Western Weekly on 19 January 2000.

AMENDMENT OF THE POLICY

The LOP 1999 incorporates the amendments listed in the table to this clause.

Amendment No.	Date Adopted	Minute No.	Date Commenced	Notified Publicly
Nil	-	-	-	-

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

APPLICATION

The LOP applies to:

- ◆ all land within the Municipality of Ashfield;
- ◆ all land taken to be included in the Council area under Section 205 of the Act;
- ◆ all premises and all areas associated with those premises;
- ◆ any vehicle used for the manufacture, preparation, storage, sale, transportation or other handling or use of food.
- ◆ any vehicle used for advertising purposes on land within the Municipality of Ashfield.

PROCEDURES FOR THE ISSUING OF ORDERS

In accordance with the Local Government Act, 1993, Councils are required to observe certain procedures before giving orders. In particular Section 132 requires that the following be carried out prior to issuing an order namely:

1. NOTICE AND REPRESENTATIONS

- Give notice to the persons to whom the order is proposed to be given of its intention to give the order, the terms of the proposed order and the period proposed to be specified as the period within which the order is to be complied with. (s132(1) LGA 1993).
- Indicate that the person to whom the order is proposed to be given may make representations to the council as to why the order should not be given or as to the terms of or period for compliance with the order. (s132(2) LGA 1993).
- Indicate that the representations are to be made to the Council on or before a specified date being, in either case, a date that is reasonable in the circumstances of the case.

Exemption

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

Representations

A person, to whom an order is proposed to be given, when making representations may be represented by a barrister, solicitor or agent (s133 LGA 1993).

The council or a specified committee, or specified councillor or employee of the council is required to hear and to consider any representations made (s134 LGA 1993).

After hearing and considering any representations made concerning the proposed order, the council, the committee or councillor or employee concerned may determine:

- (a) to give an order in accordance with the proposed order; or
- (b) to give an order in accordance with modifications made to the proposed order; or
- (c) not to give an order (section 135 Local Government Act, 1993).

2. CRITERIA FOR CONSIDERATION

The types of orders the Environmental Health Services are generally involved in, the circumstances under which they may be given and the criteria to be considered if any are listed in the orders schedule. In areas where it is considered that the circumstances for the particular order are self explanatory no additional criteria has been provided.

Section 125 of the Local Government Act 1993 is also explained in this document.

Note:

Council under Section 126 of the Act may not give an Order in respect of the following land, without the prior written consent of the Minister.

- Vacant Crown Land
- A reserve within the meaning of Part 5 of the Crown Lands Act 1989
- A Common

3. CONTENT OF ORDERS

The order is required to:

- Indicate the things the person must do or refrain from doing or instead specify the standard that the premises are required to meet. The order may also specify particulars of work to be submitted for approval (s139 LGA 1993).
- State the reasons for the order (s135 LGA 1993).
- Specify a reasonable period for compliance. If a serious risk or emergency, compliance can be required immediately (s137 LGA 1993).
- The Orders Regulation (Clause 25) requires the following information be included.
 - Any relevant provision of the Act, Local Orders Policy or Regulation that are not being or have not been complied with.
 - That it is an offence not to comply with an order and the maximum applicable penalty.
 - That if not complied with, the council may give effect to the order and recover the cost of doing so from the person concerned.

4. REVOCATION AND MODIFICATION OF ORDERS

Council may modify (s152 LGA 1993) or revoke (s153 LGA 1993) an order at any time. Modification can include the time period specified.

5. AFTER AN ORDER IS GIVEN

There are a number of possible scenarios after an order has been given:

- Owner/occupier complies. If occupiers/managers do so they may deduct cost (plus interest) from rent or recover such costs in the court (s147 LGA 1993).
- Council can revoke or modify the order (s152, s153 LGA 1993).
- Person on whom the order is served may appeal to the Land and Environment Court (see Sections 180, 181, 182 LGA, 1993).
- Person fails to comply with the Order.
 - It is an offence not to comply with an order. The Act specifies penalties for such offences and provides mechanisms for enforcement, including court action for non compliance (s628 LGA 1993).

- Council may do all things as are necessary or convenient to give effect to the order, including the carrying out of any work requested by the order (s678 LGA 1993). Costs are recoverable.

This policy does not affect the power of the council to give orders, directions or notices under other legislation, including:

- ◆ Companion Animals Act 1998
- ◆ Food Act 1989
- ◆ Public Health Act 1991
- ◆ Protection of the Environment Operations Act 1997
- ◆ Roads Act 1993

SECTION 124 AND 125 ORDERS

The following Orders under Sections 124 and 125 of the Local Government Act are set out to indicate:

- (a) To do what (action required to be taken)
- (b) In what circumstances (restricts the particular circumstances in which an order may be given).
- (c) To whom (the person the order must be given to).

ORDER Nos. 5 (c), (d), (e), (f)

To Do What?

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

- (c) A building or a temporary structure used as a place of public entertainment.
- (d) A place of shared accommodation.
- (e) A hairdressers shop or beauty salon.
- (f) A Mortuary.
- (g) Repealed

In What Circumstances?

Failure to comply with relevant standards or requirements set or made by or under this Act.

To Whom?

Owner, occupier or manager.

Criteria

- (a) Such an order would be issued if it is considered that the health or safety of the persons may be compromised.
- (b) Schedule 1 – “Places of Shared Accommodation” under the Local Government (Orders) Regulation, 1999;
- (c) Schedule 2 – “Standards for Hairdressers Shops” and Schedule 3 – “Standards for Beauty Salons” under the Local government (Orders) Regulations, 1999; the Skin Penetration Guidelines issued by the NSW Department of Health, AS 1668, parts 1 and 2.
- (d) Schedule 4 – “Standards for Mortuaries” under the Local government (Orders) Regulation, 1999; AS 1668, parts 1 and 2.
- (e) Such an order would be issued in the circumstances stated in (c) above, if structural work is carried out or other works are required as a result of

an assessment under the Environmental Planning and Assessment Act or Local Government Act.

ORDER No. 7

To Do What?

To fence land.

In What Circumstances?

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

To Whom?

Owner or occupier of land.

Criteria

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

ORDER No. 8

To Do What?

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

In What Circumstances?

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

To Whom?

Owner or occupier of land.

Criteria

Such an order would be served if there is unauthorised use of or duplication of numbers, numbers not in accordance with the street patterns, confusion in identification of premises and the owner/occupier had not complied with Council's requests for rectification.

ORDER No. 9

To Do What?

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

In What Circumstances?

Hole or waterhole is or may become dangerous to life.

To Whom?

Owner or occupier of land.

Criteria

- (a) The hole or waterhole is directly accessible from a public place or another private property and/or
- (b) The hole or waterhole is not adequately fenced off from a public place or other private property, and,
- (c) The nature, location and depth of the hole or waterhole is considered to be dangerous to life or likely to be a breeding place for mosquitoes.
- (d) Does not include any structure defined as a swimming pool under the Swimming Pools Act 1992.

ORDER No. 10

To Do What?

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

In What Circumstances?

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

By Whom?

Owner or occupier of land.

Criteria

“Article” or “matter” includes but is not limited to:-

- Disused motor vehicles, caravans, trailers or boats;
- Disused motor vehicle, caravan, trailer or boat parts;
- Disused machinery, equipment and appliances;
- Old, used or second hand materials (including building materials);
- Demolition material (excluding hazardous materials)
- Sand, soil, rock, blue metal and any other material derived from any extraction or dredging process;
- Any organic or vegetative material;
- Any industrial or commercial waste products;
- Any household rubbish or waste;
- Any recycled or composted material
- Furniture
- Any clothes drying facility or implement

ORDER No. 11

To Do What?

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

In What Circumstances?

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

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

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

To Whom?

Owner or occupier of land.

For Environmental Damage to have occurred

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

- (a) Drainage, being a drain or system of drains, whether artificial or natural, which are designed for the carrying of water other than sewerage and which includes a natural water course or
- (b) Drainage works, being any part of the on-site process involved in the construction of a drain or drainage system and which includes, but not limited to site excavation, materials, compiling and any associated building works or

ORDER No. 12

To Do What?

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

In What Circumstances?

Other land is being damaged or is likely to be damaged.

To Whom?

Owner or occupier of land.

Criteria

- (a) Erosion of land is occurring from the flow of surface water.
- (b) Water flowing onto any other property.
- (c) Quality or quantity of stormwater is likely to cause environmental damage.

Includes but not limited to:

- Water from defective guttering, down pipes or drainage (including underground drainage pipes)
- Roof water
- Water from paved areas such as driveways, concrete slabs, tennis courts or similar
- Discharges, overflow or backwash from swimming pools
- Water from blocked stormwater easements
- Redirected stormwater runoff

But does not include:

Stormwater runoff which is NOT redirected (i.e. natural flow) in any manner.

Note: A circumstance in which the flow of surface water across land is capable of being regulated by the Environmental Protection Authority constitutes a circumstance where an Order No. 12 cannot be made. (Clause 14 (Orders) Regulation).

ORDER No. 15

To Do What?

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

In What Circumstances?

The activity constitutes or is likely to constitute:

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

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

To Whom?

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

Criteria

Includes but not limited to:

- the removal of lead based paint from any building or structure.
- Demolition, renovation, removal or any other work that carries dust or fine particles that may contaminate surrounding areas or be or likely to be detrimental to health if ingested or breathed in.

(Notice of intent to serve an Order does not apply to an Order No. 15 (Sect.129(2) LGA 1993))

ORDER No. 16

To Do What?

To cease the use of premises or to evacuate premises.

In What Circumstances?

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

To Whom?

The person to whom Order No. 15 is given.

Criteria

No additional criteria.

(Order No. 15 – life threatening hazard or threat to public health or safety.)

ORDER No. 17

To Do What?

To leave premises or not to enter premises.

In What Circumstances?

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

To Whom?

Any person.

Criteria

No additional criteria.

(Order No. 15 – life threatening hazard or threat to public health or safety.)

ORDER No. 18

To Do What?

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

In What Circumstances?

Birds or animals kept on premises are:

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

To Whom?

Occupier of Premises.

Criteria

When determining whether a Notice of Proposed Order is to be given, the following criteria is to be taken into consideration. (See Schedule 5 “Standards for Keeping Birds and Animals” Local Government (Orders) Regulation, 1999).

1. (a) Fowls (*that is, birds of the species Gallus gallus*) or Guinea Fowls

For the purpose of this Policy, fowls shall include domestic chickens, bantams or guinea fowl and does not include ducks, geese, turkeys, peafowl and other pheasants.

- (i) roosters are not permitted at any time.
- (ii) must not be kept within 4.5m of a dwelling, public hall, school or premises used for the manufacture, preparation, sale or storage of food.
- (iii) the maximum number of fowls kept on premises is not to exceed fifteen (15).

1. (b) Poultry (other than fowls or Guinea Fowls):

- (i) must not be kept within 30 metres of a dwelling, public hall, school or premises used for the manufacture, preparation, sale or storage of food.

- (ii) The maximum number of poultry (other than fowls) kept on premises is not to exceed five (5).
- (iii) Roosters or cocks are not permitted at any time.

General Requirements:

- The floors of the fowl/poultry houses must be paved with concrete or mineral asphalt underneath the roosts or perches. Fowl/poultry houses more than 15.2m from a dwelling, public halls, schools or premises used for the manufacture, preparation, sale or storage of food, and located on clean sand need not comply with this requirement.
- Fowl/poultry must not be kept under such conditions as to create a nuisance or to be dangerous or injurious to health.
- The fowl/poultry yards must at all times be kept clean and free from offensive odours.
- The fowl/poultry house is not to abut on to any dividing fence and must stand at least 1m clean of dividing fences.
- Fowl/poultry yards must be enclosed to prevent the escape of the birds.

2. Swine, Goats, Sheep, Horses

Swine, goats, sheep or horses must not be kept within the Municipality of Ashfield at any time.

3. (a) Birds other than Pigeons (including Canaries, Budgerigars, Quails, Finches and Parrots)

- (i) Aviaries must not be located within 4.5m of a dwelling, public hall, school, or premises used for the manufacture, preparation, sale or storage of food.
- (ii) Aviaries must not be kept under such conditions as to create a nuisance or to be dangerous or injurious to health.
- (iii) Aviaries must at all times be kept free from offensive odours.
- (iv) Aviaries must not abut any dividing fence.
- (v) Cages and aviaries must be of appropriate size and regularly cleaned.
- (vi) For budgerigars, generally allow a maximum of 40 birds per cubic metre of aviary.

- (vii) National Parks and Wildlife licence is required to keep more than 19 protected birds or if you wish to sell a protected bird.
- (viii) Noisy birds should be restricted in number, but in any case are subject to the requirements of Part 8.6 of the Protection of the Environment Operations Act 1997.
- (ix) As appropriate to species, size of cage/aviary or bird room. Keepers of more than 50 birds should be members of official avicultural societies.
- (x) Council approval is required for any aviary/bird house enclosure.

3. (b) Sulphur Crested Cockatoo and Long-Billed Corella

- (i) No more than two (2) birds should be kept in portable cages.
- (ii) No more than four (4) birds should be kept in an aviary.
- (iii) Sulphur crested cockatoo and long-billed corella are likely to be noisy if kept as single caged birds.
- (iv) Noisy birds should be restricted in number but in any case are subject to the requirements of the Protection of the Environment Operations Act 1997.

3. (c) Pigeons – General Requirements

- (i) Racing Pigeons may be permitted in the individual case subject to a development application being submitted to and approved by Council.
- (ii) Plans and specifications accompanying the submission of a development application to construct a pigeon loft must include details of drainage, ventilation and water proofing, type and location of food storage containers, the structure positioned to obtain the maximum sunlight and ventilation, on a hard paved smooth surface, or with a suspended floor elevated 0.8m above the ground and with adequate visible landing platforms.
- (iii) All roof and concentrated surface water are to be collected and disposed of to Council's satisfaction.
- (iv) All pigeon food is to be stored in sealed vermin proof containers. Any spillage is to be collected and disposed of or returned to the storage containers.
- (v) Pigeons must not be kept within 15 metres from a dwelling, public halls, schools or premises used for the manufacture, preparation, sale or storage of food.

- (vi) The pigeon loft and associated areas are to be kept clean and free of offensive odours at all times and action taken to minimise the emission of dust from the loft area. Manure is to be cleaned up daily and disposed of correctly. Minimum general cleaning of loft is to be undertaken once per week and the floor and perches are to be sprayed with an appropriate insecticide on a regular basis.
- (vii) Waste water associated with the cleaning of the loft should be disposed of to the sewer

- (viii) The pigeon loft and its use must not create any offensive noise, within the meaning of Noise Provisions of the Protection of the Environment Operations Act 1997 and Regulations thereunder or other substantiating legislation. Light control such as through the use of shades or blinds may be required in the early morning to restrict noise.
- (ix) No interference to be caused to the amenity of the area by reason of the emission of unreasonable noise, smell, feathers or other. Free flight is to be minimised.
- (x) Pigeons are not to be released or exercised except during the two (2) hours after sunrise or two (2) hours before sunset of any day of the week.
- (xi) Any pigeon released from the loft must not be fed within the ten (10) hour period prior to that release, for the purpose of reducing the natural inclination for the pigeons to defecate while in flight.
- (xii) On no account should birds be allowed to roost on neighbouring buildings. "Open" lofts are not permitted. Free lofting is not permitted (practice of leaving loft doors or gates open to allow pigeons access to and from the loft or locking the pigeons out of the loft).
- (xiii) The maximum number of pigeons that may be kept on any premises within the Ashfield Council area shall be:-
 - (a) Members of a recognised racing club or the Australian Pigeon Fanciers Associations – 100 birds plus 40 stock birds.
 - (b) Persons not members of an association – maximum of 20 birds.
- (xiv) Pigeons must be fed within lofts after exercise.

4. Dogs

- (i) A premises used for the keeping of a dog or dogs must not be kept under such conditions as to create a nuisance or to be dangerous or injurious to health.
- (ii) A premises used for the keeping of a dog or dogs must at all times be kept clean and free from offensive odours.

- (iii) A premises used for the keeping of a dog should be appropriately fenced to secure the dog within the premises.
- (iv) Declared dangerous dogs and restricted breed dogs shall be secured as required by Section 56 of the Companion Animals Act 1998 No. 87 and
 - The enclosure must be free standing and erected independent of common fences. In some circumstances an enclosure may be attached to a blank wall of a building belonging to the premises.
 - The enclosure must be properly constructed in a tradesperson like manner and should be of sufficient size so as to allow for exercise and be not stressful for the breed of dog.
 - A design incorporating chain wire and a roof for shade and protection from the weather.
 - A concrete/paved floor graded and drained for easy maintenance and cleanliness.
 - No construction is to commence until a Development Application for the enclosure has been submitted to and approved by Council.
- (v) A guideline is that no more than two (2) dogs should be kept on a premises unless that premises is registered and approved for breeding purposes.

5. Cats

- (i) A premises used for the keeping of a cat or cats must not be kept under such conditions as to create a nuisance or to be dangerous or injurious to health.
- (ii) A premises used for the keeping of a cat or cats must at all times be kept clean and free from offensive odours.
- (iii) A guideline is that no more than two (2) cats should be kept on a premises unless that premises is registered and approved for breeding purposes.

6. Rabbits

- (i) A premises used for the keeping of a rabbit must not be kept under such conditions as to create a nuisance or to be dangerous or injurious to health.

- (ii) A premises used for the keeping of a rabbit must at all times be kept clean and free from offensive odours.

7. Bees

- (i) No more than two (2) hives are to be kept on a premises.
- (ii) An adequate supply of water is to be provided within the premises where the bees are kept.
- (iii) Hives are to be located so that flight paths do not interfere with surrounding residents.
- (iv) Hives are to be located in rear yards only.
- (v) All hives must be registered with the Department of Agriculture.
- (vi) Bee hives must not be kept under such conditions as to create a nuisance or to be dangerous or injurious to health.

8. Ferrets

- No more than four (4) ferrets to be kept on premises.
- Ferrets must not be kept within six (6) metres of a dwelling, public hall, school or premises used for the manufacture, preparation, sale or storage of food.

9. Rats, Mice and Guinea Pigs

- (i) Must be kept in appropriate cages and not released into the environment.
- (ii) Council may use its discretion on the number of rats/mice and guinea pigs kept at a premises.

10. Reptiles

- (i) Reptile species shall only be kept as specified by the Reptile Keepers Licence issued by the National Parks and Wildlife.
- (ii) A class 1 or 2 or 3 Reptile Keepers Licence must be obtained from the National Parks and Wildlife Service prior to obtaining any reptile. It is against the law to have in your possession any reptile without this licence.

11. Miscellaneous

- (i) The keeping of all other animals not otherwise listed above is at the discretion of the council as to the suitability of the animal(s) and number proposed.

- (ii) Such animals would be required to be kept under such conditions as to prevent the creation of a nuisance or not to be dangerous or injurious to health.
- (iii) The area proposed for the keeping of such animals must at all times be kept clean and free from offensive odours.
- (iv) Where the keeping of birds or animals on premises is capable of being regulated by the Environmental Protection Authority, Council is excluded from making an Order No. 18.

ORDER No. 19

To Do What?

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

In What Circumstances?

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

To Whom?

Occupier of land

Criteria

Definitions

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

ORDER No. 20

To Do What?

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

In What Circumstances?

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

To Whom?

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

Criteria

- (a) Council's Guidelines for the Hygiene Operation of Temporary Food Premises, Food Stalls and Food Vending Vehicles.
- (b) Council's Guidelines for Food Premises.
- (c) Council's Guidelines for Food Vending Vehicles.
- (d) AS1668 Part 2 "Mechanical ventilation for acceptable indoor air quality".

NOTE: If the circumstances are such as to or be likely to constitute a threat to public health an emergency Order may be issued pursuant to Section 129(2) of the Act.

ORDER No. 21

To Do What?

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

In What Circumstances?

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

To Whom?

Owner or occupier of land or premises.

Criteria

When determining whether a notice of proposed order or order is to be given the following criteria is to be taken into consideration.

Definitions

Land

Land or premises would be considered not to be in a safe and or healthy condition if the safety or the health of the community is detrimentally affected and includes but is not limited to the following:

- The abatement of dampness in walls and ceilings in any property;
- The repair of leaky roofs and renewal or repair of defective guttering and downpiping;
- Provision of adequate wholesome water supply;
- The renewal or repair of waste pipes; and sanitary fittings and flush pipe to water closet pans;
- The renewal of broken window glass and sash cords to render windows capable of being opened top and bottom;
- The removal of defective floor timbers and stair treads and replacement with sound material;
- The removal of accumulations or deposits which are likely to afford harbourage for vermin;
- Renewal or repair of defective sewerage service pipes;
- Clearing of choked sewerage service pipes;
- The removal of any vegetation or vegetative matter whether alive or dead which is likely to become a harbourage for rubbish or vermin;
- Provision of suitable kitchen sink and facilities approved by council for bathing and for washing of clothes with water laid there to and provision of an adequate stove or other facilities for cooking.

Note: Where the condition of land or premises in respect of Health or Safety is capable of being regulated by the Environmental Protection Authority, Council is excluded from making an Order No. 21.

ORDER No. 22

To Do What?

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

In What Circumstances?

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

To Whom?

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

Criteria

Includes but not limited to:

- (a) The provision of:
 - (i) Approved impervious receptacles with close-fitting lids for the containment of garbage on premises, such receptacles being placed on the roadway as and when directed by Council for regular collection.
 - (ii) Adequate garbage storage facilities in accordance with Council's requirements for Garbage Handling Systems by way of garbage storage rooms within new residential unit buildings and/or new residential flat buildings or in existing residential unit buildings and/or existing residential flat buildings, where sufficient space is available in existing premises;
 - (iii) A room or an approved container on new premises for the containment of recyclable materials;
- (b) Where waste is present on land or premises and is not being stored, collected or removed satisfactorily from those premises.
- (c) Premises being used as an unauthorised waste storage facility including but not limited to the storage of garbage, refuse, paper, recyclables, whitegoods and building materials.

ORDER No. 25

To Do What?

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

In What Circumstances?

It is necessary for the purpose of protecting public health.

To Whom?

Owner or occupier of premises.

Criteria

When determining whether a notice of proposed order or order is to be given the following criteria is to be taken into consideration.

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

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

ORDER No. 27

To Do What?

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

In What Circumstances?

The object or matter:

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

To Whom?

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

Criteria

Any article, item or thing which is visible and tangible and includes and is not limited to:

- Advertising sign, advertisement generally;
- Motor vehicles or motor vehicle parts;
- Caravans or caravan parts;
- Trailers/boats or trailer/boat parts;
- Machinery, equipment and appliances;
- Second hand materials including building materials;
- Demolition materials;
- Sand, soil rock, blue metal and any other material derived from any construction;
- Any organic or vegetative material;
- Any industrial or commercial waste product;
- Any household rubbish or waste;
- Any recycled or composted material;
- Any stand, or article used for the display, distribution or sale of products;
- Any products or merchandise for distribution or sale.

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

ORDER No. 28

To Do What?

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

In What Circumstances?

There is actual or likely damage:

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

To Whom?

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

Criteria

No additional criteria.

ORDER No. 29

To Do What?

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

In What Circumstances?

It is in the public interest to do so.

To Whom?

Owner of the work or structure.

Criteria

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

ORDER No. 30

To Do What?

To comply with an approval.

In What Circumstances?

The approval is not being complied with.

To Whom?

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

Criteria

An approval granted by Council has not been complied with.

ORDER UNDER SECTION 125 OF THE LOCAL GOVERNMENT ACT, 1993

To Do What?

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

In What Circumstances?

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

To Whom?

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

Criteria

Where a "public nuisance" materially affects the reasonable comfort and convenience of sufficient people, to constitute the public or a section of the public.

For example, any wrongful or negligent act or omission in a public road that interferes with the full, safe and convenient use by the Public of their right of passage is a public nuisance.

PENALTIES

Penalties for non-compliance with the terms of orders issued by Council are presented under Section 628 of the Local government Act 1993.

	<u>Maximum Penalty</u>
(a) Orders Nos 1-17 (s124)	50 penalty units for an individual 100 penalty units for a corporation
(b) Orders Nos 18-29 (s124)	20 penalty units
(c) Orders Nos 30 (s124)	50 penalty units
(d) s125 Offences	20 penalty units

One penalty unit is currently (Oct '95) equal to \$110 (Interpretation Act 1987)

(Provision also exists under some orders for the issue of on-the-spot penalty notices for non-compliance).

DICTIONARY OF DEFINITIONS

Words used in the Local Orders Policy (LOP) which are defined in the dictionary at the end of the Local Government Act or under its Regulations have the meanings set out in that Dictionary and Regulation unless a provision of the LOP specifically indicates to the contrary.

DEFINITIONS

"Abatement" means the summary removal or remedying of a nuisance (the physical removal or suppression of a nuisance) by an injured party without having recourse to legal proceedings.

"Act" means the Local Government Act, 1993 and Regulations.

"Adequate" means equal to the requirement or occasion; fully sufficient, suitable or fit.

"Article" means as defined in the Impounding Act 1993.

"Clean " and Sanitary" means the provision of a healthy environment by the exclusion of dust, dirt, vermin and bacteria.

"Convenience" means a state of affairs in which members of the community can enjoy a public place without aggravation, fear, annoyance or disruption from a source with within private property (i.e. non public place).

"Danger to the Public" means a liability or exposure to harm, injury risk or peril.

"Dangerous" means more than trivial risk.

"Development Consent" means an approval issued under section 91 of the Environmental Planning and Assessment Act.

"Dilapidated" reduced to or fallen into ruin or decay.

"Environmental Health Officer" means as defined in the Public Health Act 1991.

"Expedient" proper in the circumstances.

"Land" means as in the Interpretation Act 1987.

"Land in the immediate vicinity of a Public Place" means any land either having an allotment boundary to a public place or giving legal access to the public across any other land to a public place.

"Likely" means a real possibility.

"Matter" means the organic or inorganic substances or substances of which physical objects, whether solids, liquids or gases are composed.

"Natural Landscape" means an area of land in which the dominant vista consists of flora or fauna or naturally occurring geographical features.

"Necessary" means doing of a thing which is reasonably required or legally ancillary to its accomplishment.

“Nuisance” consists of interference with the enjoyment of public or private rights in a variety of ways. A nuisance is “Public” if it materially affects the reasonable comfort and convenience of a sufficient class of people to constitute the public or a section of the public. For example, any wrongful or negligent act or omission in a public road that interferes with the full, safe and convenient use by the public of their right of passage is a “public nuisance”.

“Physical environmental damage” means the degrading of existing physical surroundings including the land or water.

“Protecting public health” means the preservation of the integrity of an area from the spread of infectious disease and the keeping of premises and land free from offensive and unwholesome matter such that the community is safeguarded.

“Purpose of a building” means as defined in the Local Government Act (Approvals) Regulation 1993.

“Rear Yard” means that portion of the property that is not capable of being seen directly from a public place.

“Safety” means freedom from injury or danger.

“Safe or healthy condition” means the absence of any matter, object or thing which is likely to affect in a detrimental manner the health of a community.

“Sewerage system” in relation to any premises means the pipes, fittings and fixtures on the premises, connected to the Sydney Water infrastructure, which are used or intended to be used for the conveyance of sewage from the premises but does not include a septic tank, an effluent system or a sullage system.

“Significant” means important; of consequence.

“Surface water” means all water which runs across the surface of the land and which may originate from any source including non-polluted water, water from defective guttering, downpipes or drainage, roof water, water from paved areas, discharges or overflows from swimming pools and water from blocked stormwater drains or pipes but shall not include seepage or water percolating to the surface arising from excavation within the property suffering damage or likely to suffer damage.

“Threat” means a reasonable menace or likelihood of harm.

“Unsightly Conditions” land or building will be considered unsightly when its exterior appearance varies significantly from adjoining properties so that the subject land or building diminishes the street scape when viewed from a public place or from property within the neighbourhood.

“Vehicle” (food vending vehicle) includes any mobile or stationary vehicle and any adjacent area, used for the purposes of distributing, preparing and/or selling food.

“Water Closet” means a fixed receptacle for the disposal of sewage to the Sydney Water sewerage system.

“Waterhole” or “Dangerous Hole” means any hole, pit, excavation, or waterhole which in the opinion of the Council is or may become dangerous to life but does not include a swimming pool within the meaning of the Swimming Pool Act, 1992.

“Waste Receptacle” means a container approved by Council, used for the retention and storage of rubbish arising from premises.

“Water supply pipe” means a pipe of approved material which is used to provide water from the Sydney Water water supply system.

“Work” means any activity, process, task or action.