



Policies, Procedures and Guidelines

LOCAL ORDERS POLICY

ENV017

BACKGROUND

Section 159 of the Local Government Act 1993 allows Council to prepare and adopt policies for the operation of Part 2 of Chapter 7 of the Act which deals with making orders.

This Policy will apply to the matters set out in the Local Government Act 1993 at Part 2 Division 1 which empower the Council to Order a person to do or refrain from doing a thing under certain circumstances. This Policy does not apply to other circumstances provided for in the Local Government Act 1993 and other Legislation which specifically empower the Council to make Orders, when appropriate and as the need arises.

The exercise of the Council's order making power, in accordance with this Policy and relevant statutes, co-exists with the Council's other regulatory powers. For example, the Council has power to make and enforce policies in certain circumstances and to enforce compliance with the requirements of the Local Government Act 1993 and a range of other legislation.

A local orders policy is to specify the criteria which the council must take into consideration in determining whether or not to give an order under section 124 LGA 1993.

This Policy has the following link to Council's Strategic Plan 2016-2026:

- 5.7 Strong Effective Council

OBJECTIVE

Lachlan Shire Council is responsible for providing the governance and management of its area at a local level. In particular it is the function of the Council to provide for the welfare, well-being and interests of the members of its community and to take measures to protect the area from hazards and to improve amenity.

To fulfil its functions, Council has a range of statutory powers. These powers enable the Council to exercise its regulatory functions by making Policies, Orders and Notices. Council maintains an Order Making Policy in relation to the exercise of its powers pursuant to Chapter 7 Part 2 Division 1 of the Local Government Act 1993, to promote the health, safety and well-being of the community. The Policy sets out the matters about which Orders will be made and the relevant principles, procedures and non-compliance actions that will be applied.

SCOPE

In each situation in which the Council is considering making an Order to require a person to act or to refrain from acting, within its powers to do so, the Council will investigate and consider (to the extent that is relevant and necessary) the following circumstances:

Further Information: Lachlan Shire Council ☎ 0268951900 ✉ Email: council@lachlan.nsw.gov.au				Page 1 of 14
Version:	Commencement Date:	Last Review Date: August 2015	Next Review Date: August 2017	TRIM No. D15/10652

- the severity of the incident or circumstance;
- the hazard or danger posed to the community;
- the risk to health and safety of the community;
- detraction from the amenity of the locality;
- the number of occurrences of the activity or incident;
- the impact of any previous actions to deal with the activity or incident;
- the significance of the breach, any other public interest or well-being considerations;
- the availability of a more appropriate response by the Council.

To this end, Council will apply the principles of social justice, ecological sustainability, an accountable and transparent process and a high level of customer service when undertaking to resolve an order making issue in relation to this Policy.

DEFINITIONS

Definitions used in this policy relate to those contained in the Local Government Act 1993 and Regulations there to.

PROCEDURE BEFORE AN ORDER IS GIVEN

Notice to be given of proposed order

Before giving an order, council shall give notice to the person 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).

The council's notice shall also 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.

The notice will provide that the representations are to be made to the council via the Director Environment and Planning and General Manager on or before a specified date that is reasonable in the circumstances of the case.

Making of representations

A person may, in accordance with a notice under section 132, make representations concerning the proposed order. For the purpose of making the representations, the person may be represented by an Australian legal practitioner or agent (s133).

Procedure after hearing and consideration of representations

After hearing and considering any representations made concerning the proposed order, the council 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.

Further Information: Lachlan Shire Council ☎ 0268951900 ✉ Email: council@lachlan.nsw.gov.au				Page 2 of 14
Version:	Commencement Date:	Last Review Date: August 2017	Next Review Date: February 2021	TRIM No.

If the council determinations to give an order in accordance with modifications made to the proposed order following representations, the council is not required to give notice of the proposed order as so modified (s135).

Action to be taken – if urgent

- Council will proceed to make an order without negotiation or notice in accordance with section 124 where Council considers the circumstance or activity constitutes, or is likely to constitute:
- a threat to life; or
- an immediate threat to public health or public safety; or
- an emergency situation.

ORDERS GENERALLY

Reasons for orders to be given

Council shall give the person to whom an order is directed the reasons for the order. The reasons shall be included in the order or in a separate advice.

In a case of urgency, the reasons may be given the next working day.

Period for compliance with order

Council shall specify a reasonable period within which the terms of the order are to be complied with.

An order may require immediate compliance with its terms in circumstances which the council believes constitute a serious risk to health or safety or an emergency.

Notice of right to appeal against order (s138)

An order issued by Council will include the right of the person to appeal to the Land and Environment Court against the order or a specified part of the order, and specify the period within which an appeal may be made.

Standards of Work (s139)

An Order may specify standards and work that the premises are required to meet, and may indicate the nature of the work that, if carried out, would satisfy that standard. The order may require the owner or occupier to prepare and submit to council, within the period (not exceeding 3 months) particulars of the work the owner or occupier considers necessary to comply with the order.

Orders affecting heritage items (s142)

An order that affects an item of heritage shall be considered under s142LGA1993. Consideration will be given to listed heritage items and local significance.

Giving and taking effect of orders (s144-147)

Further Information: Lachlan Shire Council ☎ 0268951900 ✉ Email: council@lachlan.nsw.gov.au				Page 3 of 14
Version:	Commencement Date:	Last Review Date: August 2017	Next Review Date: February 2021	TRIM No.

An order is given by serving a copy of the order on the person to whom it is addressed and takes effect from the time of service or a later time specified in the order. If appropriate in the circumstances of the case, an order may direct two or more people to do the thing specified in the order jointly.

If land, including land on which a building is erected, is owned or occupied by more than one person an order in respect of the land or building is not invalid merely because it was not given to all of those owners or occupiers.

Occupier of land may be required to permit owner to carry out work (s148)

The council may order the occupier of any land to permit the owner of the land to carry out such work on the land as is specified in the order (being work that is, in the council's opinion, necessary to enable the requirements of this Act or the regulations, or of any order under Division 1, to be complied with).

An occupier of land on whom such an order is served must, within 2 days after the order is served, permit the owner to carry out the work specified in the order.

Modification of orders (s152)

Council may modify an order it has given to a person (including a modification of the period specified for compliance with the order) if the person agrees to that modification.

POLICY

Matters to Which the Policy Applies

The matters to which this Policy applies are set out below. The matters are stated in general terms with particular examples for illustration (8.1.1 – 8.1.5). These examples are not intended to be an exhaustive list of the circumstances in which the Policy will apply. They are included to assist the community to understand the purpose and intent of this Policy and the way in which it will be applied.

Attached is a reference to Part 2 Division 1 LGA 1993 as at 3rd January 2017. To ensure that information is correct at the time of reading this Policy the public should refer to the most up to date legislation. Councils Environment and Planning staff can assist to provide a copy of the Table under Section 124.

Power to require owner of adjoining land to carry out specified work:

The Council may make an Order to the owner of land adjoining a road requiring that they take action to construct, remove or repair a crossing place from the road to the land or to do such things as are necessary to control the flow of surface water across land.

Unightly Condition of Land:

The Council may make an Order directing the owner or occupier of land to ameliorate an unsightly condition of land that detracts from the amenity of the locality by removing or stack articles, to cover articles, to erect fences or screens or to plant trees.

Further Information: Lachlan Shire Council ☎ 0268951900 ✉ Email: council@lachlan.nsw.gov.au				Page 4 of 14
Version:	Commencement Date:	Last Review Date: August 2017	Next Review Date: February 2021	TRIM No.

Hazards on Land Adjoining a Public Place:

- The Council may make an Order directing the owner or occupier of land to take action to deal with hazards on lands adjoining a public place. Examples of relevant circumstances include:
 - a dangerous fence adjoining any road, community land or public place;
 - where there are overhanging branches, overgrown vegetation or structures on land adjoining a public place which obstruct streets;
 - To alter or repair a structure on, over or under a public place eg awning on a shop
 - where a flag, banner, flagpole or sign intrudes into a public place.

Animals that May Cause a Nuisance or Hazard:

- The Council may make an Order directed to an owner or occupier of land or any person engaged in promoting or conducting an activity that creates a nuisance or hazard to health or safety associated with a live or dead animal or animals (references to animal or animals includes birds and insects).
- Examples of relevant circumstances include:
 - slaughtering of animals in an urban situation;
 - keeping an excessive number of insects, birds or other animals;
 - keeping animals which generate excessive noise, dust or odour or attract pests or vermin;
 - keeping an aggressive animal or keeping an animal in a situation where it cannot be adequately contained or may cause danger to the public (refer to Companion Animals Act);
 - failure to bury or otherwise lawfully dispose of in a sanitary manner any dead animal or bird;
 - failing to keep poultry in an appropriate structure free from vermin so as to cause a nuisance or be injurious to health;
 - the keeping of bees in close proximity to other property.

Inappropriate use of a Vehicle:

- The Council may make Orders directed to an owner or occupier of land or a person apparently occupying a caravan or vehicle which is used as a place of habitation.
- Examples of relevant circumstances include:
 - where use of a caravan or vehicle for habitation presents a risk to the health and safety of an occupant;
 - use of the vehicle as habitation causes a threat of damage to the environment;
 - use of the vehicle as habitation detracts significantly from the amenity of the locality.

Action on Non-Compliance with an Order

The Council may, if the requirements of an Order are not complied with within the time specified in the Order, itself carry out the requirements of an Order (cl99 Regulations). Council shall give the owner or occupier of premises written notice before a person authorised to enter premises under the Act does so (s193LGA).

The reasonable costs and expenses of the Council in carrying out the requirements of an Order may be recovered by the Council from the person who failed to comply with the Order as a debt.

Further Information: Lachlan Shire Council ☎ 0268951900 ✉ Email: council@lachlan.nsw.gov.au				Page 5 of 14
Version:	Commencement Date:	Last Review Date: August 2017	Next Review Date: February 2021	TRIM No.

Where an amount is recoverable from a person by the Council, the Council may give that person notice in writing to pay the amount within no less than 28 days from the date of the notice. If the person fails to pay the amount that person is liable to pay interest and, if the person is the owner of the land to which the Order relates, the Council may impose a charge on the land for the unpaid amount and interest, in accordance with the Act.

Non-compliance with an Order of the Council

Non-compliance with an Order of the Council will constitute a breach of the Local Government Act 1993 and an offence for which a person may incur statutory penalties provided for in the Local Government Act 1993.

All Orders of the Council will include the specific statutory penalty relevant to non-compliance with that particular Order, and will advise of any applicable appeal rights.

Review & Evaluation

This Policy will be reviewed within 12 months of the term of a new Council or when changes are made to the Act. The General Manager will report to Council on the outcome of the review and make recommendations for amendment, alteration or a substitution of a new Policy if considered necessary.

Availability of the Policy

This Policy will be available for inspection at Council's principal office during ordinary business hours and at Council's website www.lachlan.nsw.gov.au. Copies will also be provided to interested members of the community upon request, and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.

Schedule 1: Section 124 – 128A Local Government Act 1993

Note: Members of the public are advised to refer to the current version of Section 124 LGA 1993 and not rely on this version due to legislation changes that occur.

Part 2 Division 1 Giving of orders

124 Orders

A council may order a person to do or to refrain from doing a thing specified in Column 1 of the following Table if the circumstances specified opposite it in Column 2 of the Table exist and the person comes within the description opposite it in Column 3 of the Table.

Note: This section does not affect the power of a council to give an order (or a notice or direction) under the authority of another Act. For example, some of those Acts and the orders (or notices or directions) that may be given include:

Food Act 2003	(by delegation) improvement notice or prohibition order
Protection of the Environment Operations Act 1997	environment protection notices

Further Information: Lachlan Shire Council ☎ 0268951900 ✉ Email: council@lachlan.nsw.gov.au				Page 6 of 14
Version:	Commencement Date:	Last Review Date: August 2017	Next Review Date: February 2021	TRIM No.

Public Health Act 2010	direction concerning maintenance or use of certain regulated systems
Roads Act 1993	order preventing the passage of traffic along a road or tollway
	order for the removal of an obstruction or encroachment on a road
Swimming Pools Act 1992	order requiring owner of swimming pool to bring it into compliance with the Act

A person who fails to comply with an order is guilty of an offence—see sec 628.

Table Orders

Orders requiring or prohibiting the doing of things to or on premises

Column 1		Column 2	Column 3
To do what?		In what circumstances?	To whom?
1	To demolish or remove a building	(a)–(c) (Repealed) (d) Building is erected in a catchment district and causes or is likely to cause pollution of the water supply	Owner of building
2	(Repealed)		
3	To repair or make structural alterations to a building	(a), (b) (Repealed) (c) Building is erected in a catchment district and causes or is likely to cause pollution of the water supply	Owner of building
4	(Repealed)		
5	To take such action as is necessary to bring into compliance with relevant standards or requirements set or made by or under this Act or under the Local Government Act 1919 : (a) a camping ground, caravan park or	Failure to comply with relevant standards or requirements set or made by or under this Act or under the Local Government Act 1919	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

	<p>manufactured home estate</p> <p>(b) a moveable dwelling or manufactured home</p> <p>(c) (Repealed)</p> <p>(d) a place of shared accommodation</p> <p>(e) a hairdressers shop or beauty salon</p> <p>(f) a mortuary</p> <p>(g) a water meter on premises</p> <p>(h) a water supply or sewerage system on premises, but only in relation to any work that is not plumbing and drainage work within the meaning of the Plumbing and Drainage Act 2011</p>		<p>under the Home Building Act 1989 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</p>
6	(Repealed)		
7	To fence land	Public health, safety or convenience renders it necessary or expedient to do so and there is no adequate fence between the land and a public place	Owner or occupier of land
8	To identify premises with such numbers or other identification in such manner as is specified in the order	Premises have a frontage to or entrance from a road and there are no markings that can readily be seen and understood from the road	Owner or occupier of land
9	To fence, empty, fill in or cover up a hole or waterhole in the manner specified in the order	Hole or waterhole is or may become dangerous to life	Owner or occupier of land
10	To remove or stack articles or matter, to cover articles	Land is in the immediate vicinity of a public place and	Owner or occupier of land

	or matter, to erect fences or screens or to plant trees	is used for the storage of articles or matter so as to create or be likely to create unsightly conditions	
11	To do or to refrain from doing such things as are specified in the order to prevent environmental damage, to repair environmental damage or to prevent further environmental damage	<p>Work carried out on land has caused or is likely to cause environmental damage, being damage to the physical environment that is caused by:</p> <p>(a) drainage, or</p> <p>(b) drainage works, or</p> <p>(c) obstructing a natural watercourse other than by a work constructed or used under a water management work approval granted under the Water Management Act 2000,</p> <p>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</p>	Owner or occupier of land
12	To do such things as are necessary to control the flow of surface water across land	Other land, or a building on the land or other land, is being damaged or is likely to be damaged	Owner or occupier of land
13, 14	(Repealed)		

Orders requiring that premises be used or not used in specified ways

Column 1		Column 2	Column 3
To do what?		In what circumstances?	To whom?
15	Not to conduct, or to cease conducting, an activity on premises (whether or not the activity is approved under this Act)	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	Any person apparently engaged in promoting, conducting or carrying out the activity
15A	(Repealed)		
16	To cease the use of premises or to evacuate premises	A person to whom order No 15 is given has failed to comply with the order	The person to whom order No 15 is given
17	To leave premises or not to enter premises	A person to whom order No 15 is given has failed to comply with the order	Any person
18	Not to keep birds or animals on premises, other than of such kinds, in such numbers or in such manner as specified in the order	Birds or animals kept on premises are: (a) in the case of any premises (whether or not in a catchment district)—of an inappropriate kind or number or are kept inappropriately, or (b) in the case of premises in a catchment district—birds or animals (being birds or animals that are suffering from a disease which is communicable to man or to other birds or animals) or pigs	Occupier of premises
19	To use or not to use a tennis court as specified	Actual or likely annoyance or threat to the safety of neighbours or users of a	Occupier of land

		public place	
--	--	--------------	--

Orders requiring the preservation of healthy conditions

Column 1	Column 2	Column 3
To do what?	In what circumstances?	To whom?
20 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	The premises, vehicle or article is not in a clean or sanitary condition	Owner or occupier of premises or owner or operator of vehicle or article
21 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	The land or premises are not in a safe or healthy condition	Owner or occupier of land or premises
22 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	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 granted or issued under the Protection of the Environment Operations Act 1997	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
22A To remove or dispose of waste that is on any residential premises or to refrain from keeping waste on those premises	The waste is causing or is likely to cause a threat to public health or the health of any individual	Owner or occupier of the premises
23 To connect premises to the council's water supply by a	The premises are situated within 225 metres of a water	Owner or occupier of land

	specified date	pipe of the council	
24	To connect premises with a sewerage system by a specified date	The premises are situated within 75 metres of a sewer of the council	Owner or occupier of premises
25	Not to use or permit the use of a human waste storage facility on premises after a specified date	It is necessary for the purpose of protecting public health	Owner or occupier of premises

Orders requiring the protection or repair of public places

Column 1	Column 2	Column 3	
To do what?	In what circumstances?	To whom?	
26	(Repealed)		
27	To remove an object or matter from a public place or prevent any object or matter being deposited there	The object or matter: (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 (b) is causing or is likely to cause danger, annoyance or inconvenience to the public	Person causing obstruction or encroachment or owner or occupier of land from which the object or matter emanates or is likely to emanate
28	To take whatever steps are necessary to prevent damage to a public place and to repair damage to a public place	There is actual or likely damage: (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	Person responsible for the excavation or the removal of the material Owner or person entitled to the benefit of the work or structure Owner or occupier of land from which surface drainage flows or from which spray

			emanates
29	To alter or repair a work or structure on, over or under a public place	It is in the public interest to do so	Owner of the work or structure

Orders requiring compliance with approval

Column 1	Column 2	Column 3	
To do what?	In what circumstances?	To whom?	
30	To comply with an approval	The approval is not being complied with	Person entitled to act on the approval or person acting otherwise than in compliance with the approval

125 Abatement of public nuisances

A council may abate a public nuisance or order a person responsible for a public nuisance to abate it.

Note: *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.

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.

126 Giving orders to public authorities

- a) An order under this Division may not be given 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.
 - (2) The Minister must not give consent in respect of vacant Crown lands or a reserve within the meaning of Part 5 of the [Crown Lands Act 1989](#) until after the Minister has consulted the Minister administering the [Crown Lands Act 1989](#).

127 Making of regulations for the purposes of this Division

The regulations may prescribe acts or circumstances that are taken to be included in or excluded from any of the acts or circumstances specified in Column 1 or 2 of the Table to section 124.

Further Information: Lachlan Shire Council ☎ 0268951900 ✉ Email: council@lachlan.nsw.gov.au				Page 13 of 14
Version:	Commencement Date:	Last Review Date: August 2017	Next Review Date: February 2021	TRIM No.

128 Catchment districts

- a) The Governor may proclaim a district to be a catchment district for the purposes of this Act.
- b) An owner of a building who complies with order No 1 in the Table to section 124 in the circumstances specified in paragraph (d) for that order, or order No 3 in that Table in the circumstances specified in paragraph (c) for that order, under section 124 is entitled to compensation from the council for the expenses incurred by the owner in complying with the order.

128A Orders about removal or keeping of waste

- a) An order in terms of order No 22A in the Table to section 124 ceases to have effect, unless earlier revoked under section 153, at the end of the period of 5 years after it is given.
- b) The protection of public health is the paramount consideration in giving any such order.

Robert Hunt

GENERAL MANAGER

Further Information: Lachlan Shire Council ☎ 0268951900 ✉ Email: council@lachlan.nsw.gov.au				Page 14 of 14
Version:	Commencement Date:	Last Review Date: August 2017	Next Review Date: February 2021	TRIM No.