

TEMORA SHIRE COUNCIL



TEMORA
The Friendly Shire

LOCAL ORDERS POLICY

ACTIVE

TEMORA SHIRE COUNCIL

Review Details

ABOUT THIS RELEASE

DOCUMENT NAME: Local Orders Policy
CODE NUMBER: PR05
AUTHOR: Temora Shire Council
ENDORSEMENT DATE: 16 May 2013

REVIEW

Revision Date	Revision Description		Date approved by Council	General Managers Endorsement
April 2013	New Policy	1	16 May 2013	GCL
September 2017	Refresh	2	N/A	GCL

PLANNED REVIEW

Planned Review Date	Revision Description		Review by
October 2021	Refresh		Environmental Health Officer

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Part A - Preliminary

A1. Objectives

Under the Local Government Act 1993, Councils have the authority to issue Orders to do or refrain from doing specified actions. The purpose of this policy is to specify the criteria which the Council will take into consideration in determining whether or not to give an order under Section 124 and 125 as those orders relate to:

- the keeping of animals and birds,
- sewerage compliance methodology, and
- regulated premises.

The authority of Councils is not limited to the above items. However, Council is providing further detail about the most common circumstances where issuing an Order may be considered.

A2. Scope

Parts B, C, and D of this Policy shall apply to:

- (a) All premises and all areas associated with those premises;
- (b) All land within the following planning zones within Temora Shire:

- R1 General Residential zone
- R5 Large Lot Residential zone and
- RU5 Village zone
- B4 Mixed Use zone
- IN1 General Industrial

Part E of this policy applies to all planning zones within Temora Shire, that are serviced by Council's sewer drainage system.

Part F of this policy applies to those businesses identified as Regulated Premises.

Except where otherwise provided or indicated, the Director of Environmental Services shall be responsible for the enforcement of the provisions of this Policy. Refer also to Council's Enforcement Policy for further details about enforcement procedures.

A3. Related Legislation

This policy is made in accordance with Part 3 of Chapter 7 of the Local Government Act, 1993, and is governed by the requirements of that Act.

A4. 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:

- (i) 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.
- (ii) 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 order.
- (iii) Indicate that the representations are to be made to the Council or a specified committee of the Council on a specified meeting date or to a specified Councillor or employee of the Council on or before a specified date being, in either case, a date that is reasonable in the circumstances of the case.

All representations are to be made to the General Manager.

In the event that representations are made to the Council and an agreement is not reached the persons affected by the order may still exercise their rights pursuant to Section 138 of the Act and have the matter determined by the Land and Environment Court.

Further details of procedures are included as part of Council's Enforcement Policy.

A5. Penalties

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

Part B – Companion Animals: Dogs, Cats

B1. Legislation – Companion Animals Act 1998

The Companion Animals Act 1998, and associated Regulation (2008) is designed to benefit pets, their owners and the wider community.

The permanent identification and lifetime registration system which came into effect on 1 July 1999, assists Council in returning lost and injured animals to their owners.

Since 1 July 1999, all dogs and cats in NSW must be microchipped at the point of sale, change of ownership or by 12 weeks of age, whichever occurs first. If a puppy, kitten, dog or cat is purchased in NSW, under the Companion Animals Act 1998, it must be microchipped first.

B2. Councils Key Regulatory Roles under the Act

Cats	
Section 31	The issuing of a nuisance notice or order – issued 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.
Sections 92;30; 10A	Issuing of penalty infringement notices – cats found in prohibited places such as food preparation / consumption areas and designated wildlife protection areas. Note: Roaming cats are not regulated other than in these areas. A notice can also be issued where a cat has not been microchipped, registered or is not properly identified while away from the property on which it is ordinarily kept. Council does not have regulatory powers to restrict roaming cats, unless clear evidence is available that shows the cat is causing a nuisance to neighbours and wildlife.
Dogs	
Section 34	Declaration of a dangerous dog – Council can declare a dog as dangerous where it displays unreasonable aggression or is kept for hunting.
Section 21	The issuing of a nuisance notice or order – issued 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.
Section 18;57	Seizure of an attacking and / or biting dog and where control requirements associated with restricted breeds are not complied with.
Sections 92;14;12A;13; 20;57A;10A	Issuing of penalty infringement notices – Dogs found in prohibited places such as Child care centre's, children's play areas, food preparation and consumption areas (unless in a road reserve), public bathing areas and parks / recreational areas so indicated as prohibiting dogs; and designated wildlife protection areas. Dogs not being contained within a property and not on a leash whilst in a public place other than a designated off leash area; as well as fines for dogs defecating in public place; the sale of a restricted dog or proposed restricted dog, where a dog has not been micro-chipped and registered.

B3. Control of Dogs

Under the Companion Animals Act 1998 (NSW) dogs must always be under the effective control of their owners including when they are let off the leash in designated off leash areas. A dog is not considered to be under the effective control of a person if that person has more than four dogs under his or her control.

B4. Off Leash Areas

Dogs are required to be restrained while in a public place with the exception of prescribed dog exercise areas. This area includes the designated area of:

- Gardner Street Reserve, Temora
- Lake Centenary, Temora

Dog owners need to have control over their dogs and it is required by law that dog droppings must be removed and disposed of correctly.

B5. Dog Litter

Owners have a legal and social responsibility to pick up after their dogs.

Uncollected faeces pose a potential health risk and can impact on amenity and waterways. This is particularly a problem in playgrounds on sports fields, on neighbours' properties and on public footpaths.

Temora Shire Council Ranger works to ensure dog owners meet their social and legal responsibility to clean up after their dogs by promoting awareness of these responsibilities, including:

- To take a plastic bag with them when they take their dog for a walk, and
- That it is an offence not to put their dog litter in the bin.

B6. De-Sexing

Temora Shire Council strongly recommends that pets be desexed unless they are intended for breeding purposes. Council receives hundreds of unwanted, abandoned and stray cats and dogs each year. The majority of these animals are the result of uncontrolled breeding and, unfortunately, many must be euthanased because homes cannot be found for them.

A desexed cat or dog is cheaper to register and can save more than two thirds of the cost of registration.

B7. Lifetime Registration and Micro-Chipping

Under *The Companion Animals Act 1998 (NSW)* cat and dog owners must take two steps to provide their pets with lifetime protection; permanent microchip identification and lifetime registration.

This two step system greatly assists Temora Shire Council and other Council's in returning pets to their owners in the event that it is lost, hurt or stolen. It also provides Council with a more effective means of keeping track of cats and dogs for the benefit of the wider community.

The Act requires cats and dogs to be identified by microchip by the age of 12 weeks and lifetime registered by the age of 6 months.

B8. Lost, Seized and Surrendered Animals

Temora Shire Council will seek to return all unaccompanied pets safely home to their owners.

Where this is not practicable, or where a dog is found straying on more than one occasion, the animal will be taken to Council's Companion Animal Shelter. Once at the facility, the owner will be given 14 days to claim a registered dog or cat or 7 days to claim an unregistered animal, before the animal becomes the property of Council.

Animals will not be released from the pound until all appropriate fees and charges are paid and the animal is microchipped and registered.

The only exception to not charge a registration fee is if the owner agrees to have the animal desexed within 28 days of leaving the Companion Animal Shelter. The owner can then pay the lower registration fee immediately there afterwards.

An animal can be surrendered to Council by filling in a Surrendered Animal form and submitting this to Council with the appropriate fee.

Under the Companion Animals Act, once an animal becomes the property of Council, the Ranger will make an assessment of the animal and decide whether the animal is suitable for re-housing or passing onto a welfare agency. Otherwise, the animal will then be euthanased by a Veterinarian.

Council will seek to re-house or foster animals to accredited animal welfare agencies where applicable.

Rangers will only re-house animals when they can be assured that the applicant can adequately care and house the animal and that the animal won't impact on neighbourhood amenity.

B9. Cat Management

Under the Companion Animals Act, cats are required to be identified in the form of a microchip or collar and tags that provides the name of the cat and the address and telephone number of the owner.

Cats are prohibited from wildlife protection areas and food preparation areas, and can be declared nuisance cats if they persistently make noise that unreasonable interferes with the wellbeing of neighbours or if they repeatedly damage the property of others.

Council makes a distinction between domesticated pet cats and feral or stray cats (which don't have an owner). If there are feral cats in built areas, they may be trapped and removed by the Council or by residents with consent from the Council.

If the Council Ranger believes a cat to be a feral or stray animal and not a companion or domestic animal, the animal can be euthanased immediately.

B10. Maximum Number of Companion Animals

In order to maintain the amenity of residential and urban areas and the health and safety of neighborhoods, Council will restrict the number of companion animals per residential property to reasonable levels when it is considered that companion animals are impacting on residential amenity, e.g. continual barking dogs, odour issues associated with poor hygiene, or poor management of animal wastes.

When this is demonstrated Council will enforce the keeping of no more than four (4) companion animals over the age of six months per residence. Where there are

continuing impacts on residential amenity from companion animals on a particular premise, Council will enforce a further reduction in the number.

To enforce this Council will utilise Order number 18 of section 124 of the Local Government Act 1993 that stipulates that Council can issue an Order to:

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

Council can also issue this Order to the occupier of the premises in the case where an inappropriate kind or number are kept or are being kept inappropriately.

The principle does not apply to rural zoned land (RU1).

B11. Barking Dogs

Persistent dog barking can be a neighbourhood nuisance and a major source of community complaint. Persistent barking may be caused by boredom, lack of exercise and stimulation, or confinement to an inappropriately small space.

To address dog barking, Council will pursue positive and proactive approaches such as:

- Providing off leash areas for dogs to socialise;
- Providing community education and training for dog owners;
- Providing a citronella collar for residents to hire.

The Ranger will issue a Nuisance Dog Order where persistent barking is considered to be nuisance behaviour.

B12. Dog Attacks

Dog attacks have been shown to have serious consequences.

Temora Shire Council together with the Department of Local Government and RSPCA will work with residents to educate them about animal behaviour and how to avoid attacks. The Ranger will work with school children in particular to teach them how to safely interact with pets, especially dogs.

Council will also continue to enforce its responsibilities in regard to 'dangerous dogs' and 'restricted breeds'.

The Ranger will follow up all serious complaints of dog attacks immediately.

B13. Restricted Breeds

It is an offence in New South Wales to sell, acquire or breed dogs on the restricted dog list including the offspring of restricted dogs:

- a. American Pit-bull or Pit-bull Terrier;
- b. Japanese Tosa;
- c. Dogo Argentino (Argentinean fighting dog)
- d. Fila Brasileiro (Brazilian fighting dog)
- e. Any dog declared by A Council under Division 6 of the Act to be a restricted dog**
- f. Any other dog of a breed kind, or description prescribed by the Regulation for the purposes of this section.

** This means any dog where the Council is of the opinion that a dog of a breed or kind of dog on the restricted dog list or a cross breed of any such breed or kind of dog.

Owners of restricted breeds (and dogs declared 'dangerous') must ensure:

- The dog is desexed;
- The dog is kept in a child proof enclosure;
- A 'dangerous dog' warning sign is clearly displayed on their property;
- The dog at all times wears a distinctive collar and tag;
- The dog is always leashed and muzzled when in public and under the control of a person over the age of 18 years;
- The dog registration details are up to date;
- Council is immediately notified if the dog attacks or injures a person or animal.

B14. Dangerous Dogs

A dog is 'dangerous' if it has without provocation, attacked or killed a person or animal, or, repeatedly threatened to attack or repeatedly chased a person or animal. 'Dangerous dogs' in NSW are dogs that are the subject of a declaration under the Act by a Council or a court that the dog is considered dangerous. Council must give notice to the owner of a dog of the Councils intention to declare the dog to be dangerous.

Police and the Ranger are empowered to impound dogs declared as dangerous. Owners of dogs declared dangerous must comply with all the conditions for restricted breeds listed above and must not be sold to a person under the age of 18 years.

Part C - Horses

C1. Land size

The establishment of new stables on land zoned R1, B2 or B4 are generally prohibited.

Horses are not permitted on land applicable to this policy if such land is less than 0.4 hectares in total. Exceptions to the above requirement will be considered by Council on a case by case basis.

Any concession made will be subject to compliance with the requirements of "Guidelines for Minimum Standards for keeping horses in urban areas" (Fact Sheet 16) from Department of Primary Industries (refer www.dpi.nsw.gov.au).

Land of a size exceeding 0.4 hectares shall comply with the requirements of "Guidelines for Minimum Standards for keeping horses in urban areas" (Fact Sheet 16) from Department of Primary Industries (refer www.dpi.nsw.gov.au).

C2. Number of Horses

The maximum number of horses at any one time shall not exceed two (2).

C3. Approvals

Each application for the keeping of horses shall be treated on its merits and approval to keep horses may not be granted in every case. Applications are to be submitted by the owner of the land.

Persons keeping horses within R1, R5, RU5 and B4 zones, without Council approval, prior to the adoption of this policy are required to apply for approval in accordance with this policy.

Applications for the keeping of horses and the construction of yards and shelters after the appointed day shall be treated as development applications.

The neighbouring owners of the land for which permission is applied for will be advised of each application. Any person who owns and who contends that his or her enjoyment of the land will be detrimentally affected if the development is carried out may object, in writing, to Council.

Stables and yards shall be kept clean and tidy to the satisfaction of Council at all times, so as not to be the cause of a nuisance.

Additional requirements for fencing may also apply for the purpose of preventing damage to an adjoining premise. An adequate fence shall be provided to preclude

horses within a distance of two (2) meters from any boundary of the adjoining premises.
Ringlock or barbed wire fencing is not permitted.

Part D - Poultry

D1. Keeping of Poultry

All poultry must be kept in accordance with the Local Government (General) Regulation 2005, Part 5 – Division 2, as follows:

Poultry not to be a nuisance or health risk

- (a) Poultry must not be kept under such conditions as to create a nuisance or to be dangerous or injurious to health.
- (b) Poultry yards must at all times be kept clean and free from offensive odours.

Poultry not to be kept near certain premises

- (c) Fowls (that is, birds of the species *Gallus gallus*) or guinea fowls must not be kept within 4.5 metres (or such greater distance as the Council may determine in a particular case) of any dwelling or public hall or school or premises used for the manufacture, preparation, sale or storage of food.
- (d) Poultry (other than fowls referred to in subclause c) must not be kept within 30 metres of any building on a property.
- (e) The floors of poultry houses must be paved with concrete or mineral asphalt underneath the roosts or perches. However, this subclause does not apply to poultry houses:
 - (i) that are not within 15.2 metres of an adjoining property boundary, dwelling, public hall or school; or
 - (ii) that are situated on clean sand.

- (f) Poultry yards must be so enclosed as to prevent the escape of poultry.

All food must be stored in sealed vermin proof containers and must not be left uncovered.

Vermin and other pests must be controlled.

All offensive odours must be controlled.

All offensive noise must be controlled.

All poultry must be housed in purpose built facilities. Council approval may be required for these structures.

Waste material, including litter and bedding, must be disposed of in an approved manner that may include composting.

Outside runs must be free draining, not to discharge to neighbouring properties and not be allowed to become muddy.

D2. Numbers of Poultry

The total numbers of poultry kept on premises must not exceed the maximum amount specified below:

Type	Maximum Numbers
Peafowl (Peacocks)	nil
Peafowl (Peahen)	nil
Roosters	nil*
Ducks	nil
Geese	nil
Turkeys	nil
Fowls (chickens)	20
Total	20

*Roosters may be permitted during the breeding season only. Roosters must be housed in a dark enclosed shed at night during that period.

Part E - Sewerage Compliance Methodology

E1. Council Sewerage System

Council is responsible for managing sewerage disposal within Temora Shire. Council has the authority to inspect connection to Council's sewerage system and can issue an order if, upon inspection, the sewerage system servicing the premises does not comply with Council's requirements. In particular, Council must be able to access the boundary shaft for individual properties. Boundary shaft inspections are required to determine their location for rectifying sewer chokes and to ensure correct disposal of stormwater is occurring.

Council will arrange for inspection of sewer connections at the time of the request for a S149 Planning Certificate, and a Sewerage Compliance Certificate can be issued after a satisfactory inspection has been completed. A fee is applicable to this service, however no inspection is required if a satisfactory inspection has been carried out within two (2) years prior to the current request.

E2. On-site Sewage Management Systems

Approval from Council under Section 68 of the Local Government Act 1993 is required for all new on-site sewage management systems.

Council will check the specifications of various on-site systems upon applications being lodged with Council.

Council will determine the inspection regime of installed systems. Low risk sites are exempt from regular inspection. Medium risk sites require regular inspections to occur every three (3) to five (5) years to be determined at the time of assessment and High risk sites, regular inspection to occur every one (1) to two (2) years.

Aerated Wastewater Treatment Systems (AWTS), inspection to occur according to the assessed risk determined by Council at the time of assessment. The AWTS must be inspected and serviced according to the manufacturer's instructions by a service technician approved by the manufacturer, at cost to the owner and the resultant certificate provided to Council for registration. Failure to submit the certificate will result in Council inspecting the AWTS at cost to the owner.

Subdivisions in unsewered areas

These developments require a full site and soil assessment consistent with the criteria contained in these development controls.

Single sites in unsewered areas

Council has identified the following criteria apply to single sites in unsewered areas:

- Allotments 2ha or less in area will require an AWTS facility to be installed.
- Allotments between 2ha and 40ha in area will require a site assessment, land capability assessment or the installation of an AWTS.
- Allotments greater than 40ha will require the installation of a conventional septic tank with absorption trench or transpiration bed.
- All single sites are required to comply with the site assessment, buffer distances, and septic tank and absorption trench requirements in these development controls.

Further details regarding site assessment, buffer distances, soil testing and sizes of septic tanks and absorption trenches are included as part of the Temora Shire Development Control Plan.

Notwithstanding risk category, all buffer distances must be maintained or achieved. If the distances cannot be achieved, then any variation will not be considered unless accompanied by a report prepared by a hydrologist certifying that ground conditions exist in the subject area that will ensure that contamination of water bodies (rivers, streams, dams, bores, lakes or the like) will not occur.

Part F - Regulated Premises

Owners, operators or proprietors of hairdressing, beauty and skin penetration premises, and mortuaries are required under Local Government Act 1993 and Public Health Act 2010 to be maintained in a clean and sanitary condition and suitably constructed to ensure hygienic conditions.

Council's officers undertake regular inspections of hairdressers, beauty salons, nail technicians and premises involved in skin penetration, such as ear piercing, and any other procedures prescribed by the regulations.

Good infection control practices will prevent the spread of disease. Procedures that involve skin penetration carry a greater risk of spreading disease because microorganisms (germs) can easily enter the body when the skin barrier is broken.

The objectives of Council's inspections are:

- To ensure the health of the public is protected when they receive treatments or services from a premises;
- To ensure operators are aware of their obligations to carry out safe, clean and hygienic procedures; and
- To ensure that the premises where procedures are undertaken comply with the relevant standards.

Matters which are investigated include:

- cleanliness
- sanitation and sterilisation practices
- adequacy of construction and
- personnel hygiene.

For further information regarding hygiene standards, refer to the NSW Department of Health website, www0.health.nsw.gov.au/factsheets/environmental/index.asp