



muswellbrook shire council

Local Orders Policy

MSC04E

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Policy Objective

The purpose of the Local Orders Policy is to, in accordance with s159 of the Local Government Act, supplement provisions of the Act and the Local Government (General) Regulation 2005 2021 by specifying the criteria which Council staff will consider in determining whether or not to give an Order under Section 124 of the Local Government Act. The Objectives are:

- ~~• To specify the criteria which the Council must take into consideration in determining whether or not to give an order;~~
- To promote an integrated framework for dealing with Orders;
- To ensure consistency and fairness in the manner in which the Council gives Orders;
- To make the Council's policies and requirements for Orders readily accessible and understandable to the public; and
- To establish a system of community participation which can effectively resolve disputes and conflicts as they arise.

Risks being addressed

This policy mitigates risks of health and safety hazards to the community, while at the same time it helps Council to improve liveability in the Shire. In particular, the Local Orders Policy helps:

- a) Minimise the incidence of nuisance being caused to persons;
- b) Protect the welfare of companion and farm animals;
- c) Protect the welfare and habitat of wildlife;
- d) Minimise the disturbance of or damage to protected vegetation; and
- e) Safeguard the environment.

Scope

This policy applies to all land within Muswellbrook Shire Local Government Area.

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 made thereunder.

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

Article means anything capable of ownership except a living creature.

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

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 within private property.

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

Dilapidated reduced to or fallen into ruin or decay.

Expedient is to promote a proposed or desired object, a means to an end.

Local Government Act means the Local Government Act 1993 (as amended) and includes subordinate legislation made thereunder.

Land includes allotments, tenements and hereditaments, corporeal and incorporeal, of any tenure or description and whatever may be the estate or interest therein.

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 probably or apparently going or destined to be.

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

Necessary means something that cannot be dispensed with.

Order means any order issued under s124 of the Act.

Physical Environmental Damage means the degrading of existing physical surroundings including the land or water.

Safety means freedom from injury or danger.

Sewage Management Facility means:

- a. a human waste storage facility, or
- b. a waste treatment device intended to process sewage, and
- c. a drain connected to such a facility or device.

Sewerage System in relation to any premises means the pipes, fittings and fixtures on the premises, connected to the 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 rising from excavation within the land that is suffering damage or likely to suffer damage.

Threat means a reasonable menace or likelihood of harm.

Waterhole or Dangerous Hole means any hole, pit, quarry, excavation, dam 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 means of the Swimming Pool Act 1992.

Waste means:

- (a) effluent, being any matter or thing, whether solid or liquid or a combination of solids and liquids, which is of a kind that may be removed from a human waste storage facility, sullage pit or grease trap, or from any holding tank or other container forming part of or used in connection with a human waste storage facility, sullage pit or grease trap, or
- (b) trade waste, being any matter or thing, whether solid, gaseous or liquid or a combination of solids, gases and liquids (or any of them), which is of a kind that comprises refuse from any industrial, chemical, trade or business process or operation, including any building or demolition work, or
- (c) garbage, being all refuse other than trade waste and effluent,

and includes any other substance defined as waste for the purposes of the *Protection of the Environment Operations Act 1997*, and a substance is not precluded from being waste merely because it is capable of being refined or recycled.

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

Work means any activity, process, task or action and includes a reference to the rebuilding of, the making of alterations to or the enlargement or extension of a work or enclosing a public place in connection with the carrying out of a work.

Policy Statement

Criteria for Consideration

In accordance with the Act, Council is required to observe certain procedures before giving Orders.

Listed in the Orders schedule are the types of orders that Council may give, the circumstances under which they may be given and the criteria that must be considered, if any. In areas where it is considered that the circumstances for the particular order are self-explanatory no additional criteria has been provided.

Note: *The giving of an order is not mandatory and is at the discretion of the Council authorised investigating officer whether or not the circumstances meet the applicable criteria for that order.*

If Council a Council authorised investigating officer decides to give an order Council is they are required to take the criteria listed in the orders schedule into consideration before giving the order (Section 131 of the Act).

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

- Vacant Crown land;
- A reserve within the meaning of the Crown Lands Act 1989;
- A Common.

Section 131A of the Act requires that if an Order will or is likely to have effect of making a resident homeless, the Council must consider whether the resident is able to arrange satisfactory alternative accommodation in the locality. If the person is not able to arrange satisfactory alternative accommodation in the locality the Council must provide the person with information as to the availability of satisfactory alternative accommodation in the locality and any other assistance that the Council considers appropriate.

Giving Notice and Representations

Section 132 of the Local Government Act requires that the following be carried out prior to issuing an Order:

- Before giving an order, Council must give notice to the person(s) 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 (*section 132(1) of the Act*).
- Council's notice must indicate that the person to whom the Order is proposed to be given may make representations to Council as to why the Order should not be given or as to the terms of or period for compliance with the Order (*section 132(2) of the Act*).
- The notice may 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 (*section 132(3) of the Act*).

- A person, to whom an Order is proposed to be given, when making representations may be represented by an Australian legal practitioner or agent. (*section 133 of the Act*).
- The Council or a specified committee, or specified Councillor or employee of the Council is required to hear and to consider any representations made pursuant to s133 (*section 134 of the Act*).

Representations are to be received, heard and considered by the Manager of the issuing officer.

After hearing and considering any representations made concerning the proposed Order, the Manager 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 of the Act*).

If the determination is to give an order in accordance with modifications made to the proposed order then Council is not required to give notice of the proposed order as so modified. (*section 135(2) of the Act*).

If Council observes the above procedure it is taken to have observed the rules of procedural fairness. (*section 130 of the Act*).

Content of Orders

The order must:

Indicate the things the person must do or refrain from doing:

- State the reasons for the order. It can be within the order or in a separate document but must be given at the same time the order is given except in the case of an emergency order in which case they must be given the next working day (*section 136 of the Act*).
- Specify a reasonable period for compliance. If there is a serious risk to health or safety or an emergency, compliance can be required immediately (*section 137 of the Act*).
- State that the person may 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 (*section 138 of the Act*).

The order may:

- Specify the standard that the premises are required to meet and indicate the nature of the work that, if carried out, would satisfy that standard instead of specifying the things that the person to whom the order is given must do or refrain from doing. (*section 139 Local Government Act*)
- Clause 99 of the Local Government (General) Regulation ~~2005~~ 2021 also requires that the following information must be included:
 - a) Any relevant provision of the Local Government Act, regulation or local orders policy made under the Local Government Act that is not being or has not been complied with;

- b) That it is an offence not to comply with an Order and the maximum penalty for the offence; and
- c) That, if the Order is not complied with, the Council may give effect to the Order and recover the costs of doing so from the person concerned.

Revocation and Modification of Orders

- Council may modify an order given to a person at any time (including a modification of the period of compliance) providing the person agrees to that modification (*section 152 Local Government Act*).
- Council may revoke an order at any time (*section 153 Local Government Act*).

After an Order is Given

There are several possible scenarios:

- The person who receives the order complies.
- The owner or occupier of premises complies. If the occupier or manager complies with the Order, they may deduct the cost (plus interest) from rent payable to the owner or recover the cost in court (*section 147 of the Act*).
- Council can modify the Order if the person agrees to the modification (*section 152 of the Act*).
- Council can revoke the Order (*section 153 of the Act*).
- The person on whom the Order is served may appeal against the order to the Land and Environment Court and seek compensation (*see sections 180, 181, 182 of the Act*).
- 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— see applicable penalties (*section 628 of the Act*).

Council may do all things as are necessary or convenient to give effect to the terms of the Order, including the carrying out of any work required by the Order. Expenses incurred in giving effect to the terms of the Order may be recovered in a Court of competent jurisdiction as a debt due to Council by the person concerned (*section 678 of the Act*).

Council may seek orders of the Land and Environment Court to enforce the terms of the order (*section 673 of the Act*).

Penalties for Non-Compliance

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

- ~~• The maximum penalty for failure to comply with Orders 3, 5, 7-12 is 50 penalty units in the case of an individual and 100 penalty units in the case of a corporation~~
- ~~• The maximum penalty for failure to comply with Orders 15-17 is 100 penalty units in the case of an individual and 200 penalty units in the case of a corporation~~

- The maximum penalty for failure to comply with Orders 18-25 and 27-30 is 20 penalty units

Orders 1, 2, 3, 4, 6, 13, 14, 20, 26

This Local Orders Policy does not include details or criteria with respect to orders 1, 2, 3, 4, 6, 13, 14, 20 and 26 in the table to section 124 Local Government Act, either because they have been repealed from the Act, or no criteria is required to be specified.

Other Orders

Section 124 of the Local Government Act 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

[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

SECTION 124 ORDERS

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

- a) To do what (action required to be taken). This wording is mandated under the Act.
- b) In what circumstances (restricts the particular circumstances in which an Order may be given). This wording is mandated under the Act.
- c) To whom (the person the Order must be given to). This wording is mandated under the Act.
- d) The criteria to be taken into consideration when determining whether an order is to be given. This wording is at the discretion of Council.

Order 5 – Compliance with standards and requirements

To do What?

To take such action as is necessary to bring into compliance with relevant standards or requirements set or made or under the Local Government Act 1993 or Local Government Act 1919:

- a. A camping ground, caravan park or manufactured home estate
- b. A moveable dwelling or manufactured home
- c. (*Repealed*)
- d. A place of shared accommodation.

This section applies to the following kinds of places of shared accommodation—

- places of shared accommodation that are class 3 buildings under the *Building Code of Australia* (within the meaning of the [Environmental Planning and Assessment Act 1979](#)),
 - places of shared accommodation that are general boarding houses within the meaning of the [Boarding Houses Act 2012](#).
- e. A hairdressers shop or beauty salon
 - f. A mortuary
 - g. A water meter, water supply or sewerage system on premise
 - h. Rectification of defective water supply or sewerage work, but only in relation to any work that is not plumbing and drainage work within the meaning of the [Plumbing and Drainage Act 2011](#)
 - i. Flow of surface water across land. This includes the repair of defective or insufficient roofing, guttering, downpiping or drainage.

In What Circumstances?

Failure to comply with relevant standards or requirements set or made by or under the Act or under the Local Government Act 1919.

To Whom?

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 the licence in force under the Home Building Act 1989 authorising the holder to contract to do the work) within twelve months after the work is carried out or the material is supplied, the licensed contractor.

Criteria:

When determining whether an Order is to be given the following criteria are to be taken into consideration

Non-compliance with:

1. With respect to Order 5(a) in its operation as to camping grounds, caravan parks and manufactured home estates, and 5(b) in its operation as to moveable dwellings, any applicable standards referred to in the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005-2021
2. ~~Clause 11 Local Government (General) Regulation 2005-2021 – “Adoption of Building Code of Australia” AND Schedule 1, Part 1 Local Government (General) Regulation 2005-2021 – “Management and use of Places of Public Entertainment”,~~
3. For the purposes of Order No 5 (d) in its operation as to places of shared accommodation to which this section applies, the standards for places of shared accommodation set out in Part 1 of Schedule 2 of the Local Government (General) Regulation 2021
4. ~~Schedule 2, Part 1 Local Government (General) Regulation 2005-2021 –~~
~~a. “Standards of Place of Shared Accommodation”~~
5. For the purposes of Order No 5 (e), the standards for hairdressers shops set out in Part 2 of Schedule 2 of the Local Government (General) Regulation 2005-2021 –
~~a. “Standards for Hairdresser Shops” and Part 3 – “Standards for Beauty Salons”~~
6. For the purposes of Order No 5 (e), the standards for beauty salons set out in Part 3 of Schedule 2 of the Local Government (General) Regulation 2021
7. For the purposes of Order No 5 (f), the standards for mortuaries set out in Part 4 of Schedule 2-Part 4 of the Local Government (General) Regulation 2005-2021 -
~~a. “Standards for Mortuaries”.~~

Water supply and sewerage system pipes, fittings and fixtures

(1) Without limiting Order No 5 (h), and except in the case of a defect to which section 88 applies, the following acts are taken to be acts that may be required by an Order under 5(h) —

(a) to remove, replace, alter, extend or repair a pipe, fitting or fixture located on premises connected to the council’s water supply system or sewerage system,

(b) to stop using such a pipe, fitting or fixture pending its removal, replacement, alteration, extension or repair.

Rectification of defective water supply or sewerage work

(1) For the purposes of Order No 5 (h) (and without limiting that Order) in the case of an Order to a licensed contractor under Column 3 of the Table to section 124 of the Act in respect of a defect, the circumstances specified in Column 2 are taken to be included in that Column only where the council notifies the contractor of the defect after the date of issue by the contractor of a certificate to the effect that the work has been carried out as required by the Act and the [Environmental Planning and Assessment Act 1979](#).

(2) A licensed contractor so notified must bear the cost of rectifying the defect.

(3) A circumstance in which the defective work is the subject of an order made by the Civil and Administrative Tribunal under the [Home Building Act 1989](#) constitutes a circumstance that is taken to be excluded from the circumstances specified in Column 2 of the Table to section 124 of the Act as circumstances in which Order No 5 (h) can be made.

(4) An Order given by a council in respect of any such defective work ceases to have effect if an order referred to in subsection (3) is made in respect of the defective work.

Order 7 – Fencing Land

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 a public place.

To Whom?

Owner or occupier of land.

Criteria:

When determining whether an Order is to be given the following criteria are to be taken into consideration:

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

Order 8 – The identification of premises

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:

When determining whether an Order is to be given the following criteria are to be taken into consideration:

Such an Order would be served if there is unauthorised use of or duplication of numbers, numbers not in accordance with the street patterns, or no numbers at all, or there is confusion in identification of premises and the owner / occupier has not complied with Council's request for rectification.

Order 9 – Dangerous hole or waterhole

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:

When determining whether an Order is to be given the following criteria are to be taken into consideration:

1. The hole or waterhole is directly accessible from a public place or another private property and/or
2. The hole or waterhole is not adequately covered or fenced to the minimum requirements of the Swimming Pools Act 1992 to prevent direct access to it from a public place or any other private property and,
3. The nature, location and depth of the hole or waterhole is considered to be dangerous to life.

Criteria Does Not Include:

Any hole or water hole that falls under the definition of a swimming pool as defined in the Swimming Pools Act 1992, as that Act has defined safety requirements.

Order 10 – Unsightly articles or matter

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.

To Whom?

Owner or occupier of land.

Criteria:

When determining whether an Order is to be given the following criteria are to be taken into consideration:

1. Definition of “Article” or “matter” in Order 10 includes but is not limited to:
 - a. Disused motor vehicles, caravans, trailers or boats;
 - b. Disused motor vehicle parts, caravan parts, trailer parts or boat parts;
 - c. Disused machinery, equipment and appliances;
 - d. Old, used or second-hand materials (including building materials);
 - e. Demolition material;
 - f. Sand, soil, rock, blue metal and any other material derived from any extraction or dredging process;
 - g. Any organic or vegetative material;
 - h. Any industrial or commercial waste products;
 - i. Any household rubbish or waste;
 - j. Any recycled or composted material;
 - k. Furniture;
 - l. Signs, notices, banners and graffiti.
2. The article(s) must be visible from the public place.

“Land in the immediate vicinity of a public place” in Order 10 means any land that immediately adjoins a public place.

Order 11 - Prevent and repair environmental damage

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 a work constructed or used under a water management work approval granted under Part 2 of the Water Management Act 2000,

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 the regulatory authority under that Act.

To Whom?

Owner or occupier of land.

Criteria:

When determining whether an Order is to be given the following criteria are to be taken into consideration:

Potential or actual physical environmental damage must be because of the flow of water over any land, discharged from the following sources:

1. Drainage, being a drain or system of drains, whether artificial or natural, which are designed for the carrying of water other than sewage and which includes a natural water course or
2. 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 buildings works or
3. Obstruction of a natural water course, being the carrying out of building works or the deposition of any material in such a position as to block or restrict the flow of water within or to redirect the flow of water away from a natural water course.

Order 12 - Control of surface water across land

To Do What?

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

In What Circumstances?

Other land or a building on the land or other land is being damaged or is likely to be damaged.

To Whom?

Owner or occupier of land.

Definition:

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, 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 land that is suffering damage or likely to suffer damage.

Criteria:

When determining whether an Order is to be given the following criteria are to be taken into consideration:

1. Erosion of land is occurring from the flow of surface water.
2. Physical damage to a building is or has occurred or there is sufficient evidence to suggest that it is likely to occur.
3. Surface water flows across the land boundary onto other land.
4. Situations where this Order may apply include but are not limited to:
 - i. Water from defective guttering, downpipes or drainage (including underground drainage pipes)
 - ii. Water from roofs not fitted with guttering
 - iii. Emptying or backwashing swimming pools
 - iv. Surface water that has been purposely redirected away from its natural direction of flow towards other land.
 - v. The surface water is turbid or otherwise polluted and is flowing across the land boundary.

Criteria Does Not Include:

1. Stormwater runoff which is **NOT** redirected in any manner (i.e. natural surface flow) and follows existing natural land contours.
2. Surface water runoff occurring in periods of exceptionally heavy rain.
3. Stormwater runoff flowing onto and down existing hard surface areas such as driveways, tennis courts, concrete slab or paved areas.
4. Discharges from defective or blocked private stormwater easements.
5. Overflows from stormwater absorption pits where contours of land and lack of access prevent direct connection of a building's stormwater drainage system to Council's Stormwater Drainage System.
6. Runoff from any building or development work that is the subject of a Development Consent and has been constructed in accordance with that consent.

7. Any circumstance in which the flow of surface water across land is capable of being regulated by any other Act by a public authority and Conservation constitutes a circumstance where an Order No. 12 cannot be made.

Order 15 - Threatening or hazardous activities

To Do What?

Not to conduct, or to cease conducting an activity on premises (whether or not the activity is approved under the Local Government 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 person apparently engaged in promoting, conducting, or carrying out the activity.

Criteria:

When determining whether an Order is to be given the following criteria are to be taken into consideration:

1. The activity being carried out is causing or is likely to cause a life-threatening hazard or a threat to public health or public safety to any person whether on private or public land.
2. Situations where this Order may apply include but are not limited to:
 - i. Use of a defective septic tank or a septic closet on premises after the date specified (in an Order No. 24 served on the owner or occupier of the premises) being the date by which the premises were required to be connected with a sewerage system.
 - ii. Construction work on a septic tank or a septic closet on premises after the date specified (in an Order No. 24 served on the owner or occupier of the premises) being the date by which the premises were required to be connected with a sewerage system.

Criteria Does Not Include:

1. Any activity that is covered by any other Act or Regulation.
2. Any activity that is controlled by another authority.

Order 16 - Ceasing to use or evacuating premises

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 17 - To leave or not enter premises

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 18 – The Keeping of Birds and Animals

To Do What?

Not to keep birds or animals on premises, other than 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

For the purposes of Order No 18, the standards for the keeping of birds or animals set out in Part 5 of Schedule 2 of the Local Government (General) Regulation 2021 apply.

Also refer to:

Order 18 (1) - The keeping of birds

Order 18 (2) - The keeping of cats

Order 18 (3) - The keeping of dogs

Order 18 (4) - The keeping of declared dogs

Order 18 (5) - The keeping of greyhounds

Order 18 (6) - The keeping of static guard dogs

Order 18 (7) - The keeping of rabbits

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Order 18 (10) - The keeping of rodents

Order 18 (11) - The keeping of horses and other livestock

Order 18 (12) - The keeping of cattle

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Order 18 (18) - The keeping of bees

Order 18 (19) - The keeping of pigs (swine)

Order 18 (20) - The keeping of fish, aquariums and ponds

Order 18 (21) - The keeping of reptiles

Order 18 (22) – The keeping of native wildlife

Order 18 (1) - The Keeping of Birds

Objectives:

- To encourage the individual aviculture enthusiast or hobbyist to manage their birds responsibly and correctly;
- To ensure that local and neighbouring residents are not affected visually by any aviculture structure;
- To ensure that the neighbours and the surrounding environment are not affected by noise, odour or vermin; and
- To ensure that the welfare of birds is maintained.

Criteria:

Environmental Management

1. All aviaries and holding facilities must be constructed of appropriate materials and of a quality of construction and maintenance that is acceptable to Council, and designed to be vermin proof, well ventilated, have an impervious surface and not cause or be likely to cause injury to birds.
2. All aviaries and facilities must be well maintained by the owner so as to avoid escape and/or injury to birds.
3. Careful regard must be given to the amenity of neighbours, especially the avoidance of excessive noise and odour.
4. The Code of Ethics produced by the Associated Bird-Keepers of Australia Incorporated, approved by the Canary and Bird Federation of Australia, must be complied with at all times.
5. Where the owner operates a business from home related to the commercial trade or retail of birds or associated items, provisions of the *Environmental Planning and Assessment Act 1997* may apply.

6. Extensive aviculture activities are required to submit aviary plans for development approval by Council.
7. Flooring must be constructed of an impervious material or in some external situations, sand or gravel with a rodent proof mesh underlay.
8. Aviaries must not be within 10 metres of any dwelling or premises used for the sale, preparation, handling or storage of food for sale.
9. Enclosed buildings for the primary purpose of holding caged birds require Council consent.
10. An animal trade must not be conducted without prior consent.
11. Vermin proof food storage facilities must be provided.
12. An adequate rodent and pest control program must be in place.
13. Excessive noise and odour must be controlled by the use of sound proofing materials, distance and choice of bird species.

Aviary Structures

Aviary structures must satisfy the development standards and general requirements outlined in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (as amended), and Subdivision 4 Aviaries, or have development consent from Council.

Order 18 (2) – The Keeping of Cats

Objectives:

- To encourage the satisfactory care and management of cats in the Muswellbrook Shire Local Government Area;
- To ensure that the keeping of cats does not adversely impact on the community or the environment; and
- To ensure that all provisions of relevant legislation are complied with.

Criteria:

1. Those persons requiring to breed or hold on their property, more than three (3) cats over the age of six months, must be authorised by Council to do so. Council Officers will determine the suitability of the premises for the purpose and number of cats to be held and will consider:
 - a) If there are adequate holding facilities in place, especially for male cats.
 - b) That cats are not be permitted to create a nuisance in any form, including straying, interfering with the properties of others.
 - c) That odours and waste are being managed to the satisfaction of Council.

2. The health of all cats is to be monitored and appropriate veterinary treatment obtained in the event of illness.
3. Wildlife must be protected from cats.
4. All provisions of the *Companion Animals Act 1998* and the *Companion Animals Amendment Act 2001* must be complied with, including:
 - a) Registration requirements; and
 - b) Micro-chipping requirements.

Note – *Owners of cats are encouraged to de-sex their cats and keep them contained at night. Registration fees are cheaper for desexed animals.*

Order 18 (3) – The Keeping of Dogs

Objectives:

- To encourage the satisfactory care and management of dogs in the Muswellbrook Shire Local Government Area;
- To ensure that the keeping of dogs does not adversely impact on the surrounding community or the environment; and
- To ensure that all dog owners comply with all relevant government legislation and regulations.

Criteria:

Note – *This section does NOT limit section 18(4) The Keeping of Declared Dogs (Dangerous and Restricted Dogs) Criteria.*

1. No attack-trained dog shall be held in a residential area unless managed by a registered owner/security company, Police service or other approved Government instrumentality.
2. The number of dogs permitted to be kept on any property in the Muswellbrook Shire Local Government Area are as follows:

a) Allotments less than 2500m² and more than 400m² in area

- Dogs in excess of 35 kilograms - maximum 2 dogs
- Dogs between 15 and 35 kilograms - maximum 3 dogs OR
- Dogs less than 15 kilograms - maximum 4 dogs

b) Allotments less than 400m²

Council recommends a maximum of 1 dog maximum weight 15kg per allotment less than 400m², unless it can be demonstrated that the keeping of additional dogs does not adversely impact upon the neighbouring community or the environment.

3. Waste material, including litter and bedding, must be disposed of in an approved manner, which may include composting.
4. All noise, including barking, must be controlled.
5. All odours must be controlled.
6. The health of all dogs is to be regularly monitored and appropriate veterinary treatment obtained in the event of illness.
7. Wildlife must be protected where possible from dogs.
8. Dog breeding and/or boarding kennels are subject to Council approval.
9. All provisions of the *Companion Animals Act 1998* and the *Companion Animals Amendment Act 2006* must be complied with, including:
 - a) Registration requirements; and
 - b) Micro-chipping requirements.

Note - Owners of dogs are encouraged to de-sex their dogs. Registration fees are cheaper for doing so.

Council will consider altering the above criteria in a case-by-case basis, depending on the facilities provided by the applicant, and after taking submissions of close neighbours into account.

Dog breeders may apply for permission from Council to vary the number of dogs permitted on any property.

Order 18 (4) – The Keeping of Declared Dogs (Dangerous and Restricted Dogs)

Objectives:

- To ensure that all requirements of the *Companion Animals Act 1998* for Declared Dogs are complied with;
- To ensure that the keeping of Declared Dogs does not adversely affect the surrounding community or the environment; and
- To ensure that the keeping of Declared Dogs does not endanger the community.

Criteria:

Note – This section does NOT limit section 18(3) The Keeping of Dogs Criteria.

1. A declared dog must be kept in an enclosure and in manner that complies with the requirements prescribed in the *Companion Animals Act 1998* and the regulations.

Order 18 (5) – The Keeping of Greyhounds

Objectives:

- To ensure the satisfactory care and management of greyhounds;
- To ensure that the keeping of greyhounds does not adversely affect the surrounding community or the environment; and
- To ensure that all owners of greyhounds comply with all relevant government legislation and regulations.

Criteria:

1. Greyhounds registered with the Greyhound Racing Control Board are not required to be micro-chipped. All other greyhounds must be micro-chipped.
2. Greyhounds must be muzzled and be always leashed in public places exempt if they are pet greyhounds and muzzle free after completing approved re-training program and wears an approved collar in a public place (Companion Animals Regulation 33B).
3. Greyhounds must be kept in a secure, fenced property to prevent escape.
4. The number of dogs permitted to be kept on any property in the Muswellbrook Shire Local Government Area are as follows:

Allotments less than 2500m² in area

- Greyhounds in excess of 25 kilograms - maximum 2 dogs
 - Greyhounds between 11-25 kilograms - maximum 3 dogs
5. The keeping of greyhounds in townhouse and unit developments and on allotments with an area of less than 400 square metres is not permitted unless they are pet greyhounds.
 6. Greyhounds must be provided with:
 - Sufficient food drink and clothing;
 - Sufficient exercise;
 - Properly constructed kennels that are adequate in size and kept in a clean and sanitary condition; and
 - Veterinary attention when necessary.
 7. Greyhound trainers must be registered with the Greyhound Racing Control Board.

Order 18 (6) – The Keeping of Static Guard Dogs

Objectives:

- To encourage the appropriate care and management of static guard dogs within the Muswellbrook Shire Local Government Area;
- To ensure that the keeping of static guard dogs (e.g. Dogs that are kept on a site) does not pose a safety threat to the Muswellbrook Shire community; and
- To ensure that the owners of static guard dogs comply with all relevant Legislation.

Criteria:

1. Owners and persons in charge of on-site guard dogs are required to undertake the following control requirements:
 - a) To provide and erect appropriate signage that is prominently displayed upon the perimeter fences to those premises being guarded, which reads “Warning – Guard Dog on Premises”;
 - b) Such signs must be of a standard to alert any reasonable person of the consequences of entry;
 - c) Such signs must be manufactured in such a manner that they are continually visible and readable in every circumstance; and
 - d) Such signs must include an emergency contact phone number to be used in emergency situations.
2. Owners and lessees of guard dogs must ensure that such dogs are securely contained upon the premises being guarded.
3. No attack trained dog may be held within the Muswellbrook Shire Local Government Area (police dogs and other Government instrumentalities excepted).
4. All provisions of the *Companion Animals Act 1998* must be followed in respect to any dog kept within the Muswellbrook Shire Local Government Area.
5. Declared dangerous dogs or guard dogs, having been declared dangerous, pursuant to the *Companion Animals Act 1998* are not permitted to be utilised as static guard dogs upon any land within the Muswellbrook Shire Local Government Area, on a commercial or private basis.

Order 18 (7) – The Keeping of Rabbits

Objectives:

- To encourage the appropriate care and management of rabbits within the Muswellbrook Shire Local Government Area;
- To ensure that rabbit owners comply with all relevant legislation; and regulations and;
- To ensure that the keeping of rabbits does not adversely affect the surrounding community and environment.

Criteria:

1. The keeping of wild rabbits is subject to all requirements of NSW Agriculture, Fisheries and Forestry which may include gaining a licence for the keeping of wild rabbits. No more than 2 wild rabbits may be kept at any one time, unless approval has been received from the Minister of Agriculture and Council.
2. No more than 4 adult domestic rabbits may be kept at any one time on an allotment less than 2500m² in area without the prior approval of Council.
3. Rabbits being kept outside in urban areas must not be kept closer than 10 metres to a dwelling or a place that prepares, stores or handles food for sale.
4. Waste material, including litter and bedding, must be disposed of in an approved manner that may include composting.
5. Hutches and cages must be kept clean at all times.
6. All odours must be controlled.
7. Rabbits must not be bred for greyhound training.
8. Rabbits must be protected from all predators.
9. Rabbits kept must be a recognised domestic breed and be kept in a rabbit proof enclosure.

Note – Owners of rabbits are encouraged to keep vaccinations for calicivirus current.

Order 18 (8) – The Keeping of Ferrets

Objectives:

- To encourage the correct care and management of ferrets in the Muswellbrook Shire Local Government Area;
- To ensure that ferret owners comply with all relevant government legislation; and
- To ensure that the keeping of ferrets does not adversely affect the surrounding community and environment.

Criteria:

1. Hutches and cages must be kept clean at all times.
2. Odours must be vigorously controlled at all times. The scent secretions of these animals are particularly pungent and are likely to be found offensive by many people.
3. Ferrets being kept outside in urban areas must not be kept closer than 10 metres to a dwelling or a place that prepares, stores or handles food for sale.
4. Protection for ferrets from extreme weather conditions must be provided.

5. Hutch or cage construction must be of a standard that will prevent escape.
6. Ferrets are not to be fed live food.
7. Sufficient food and drink must be provided at all times.
8. Ferrets must be caged and/or secured at all times and are not permitted to free range.
9. Waste material, including litter and bedding, must be disposed of in an approved manner that may include composting.

Order 18 (9) – The Keeping of Guinea Pigs

Objectives:

- To encourage the appropriate care and management and care of guinea pigs within the Muswellbrook Shire Local Government Area; and
- To ensure that the keeping of guinea pigs does not adversely affect residents and the surrounding environment.

Criteria:

1. Hutches and cages must be kept clean at all times.
2. Protection from the natural elements must be provided (particularly extreme hot weather).
3. Protection from predators (dogs, cats, foxes) must be ensured through the provision of predator proof caging.
4. Sufficient food and drink must be provided at all times.
5. Odours must be vigorously controlled at all times.
6. Waste material, including litter and bedding, must be disposed of in an approved manner that may include composting.

Order 18 (10) – The Keeping of Rodents

Objectives:

- To encourage the satisfactory care and management of companion rodents, rats and mice; and
- To ensure the keeping of rodents, rats and mice does not adversely affect the surrounding community and the environment.

Criteria:

1. The keeping of these animals is permitted as pet companion animals only. The keeping and breeding of rodents as food animals for reptile feeding is prohibited.

2. Only domesticated breeds of rats and mice are permitted to be kept.
3. Rodents, rats and mice must be confined within rodent proof cages or enclosures.
4. These animals must be protected from the predation of cats and dogs.
5. Any excess rodents must be disposed of in an appropriate and humane manner.
6. Odours must be vigorously controlled at all times.
7. Waste material, including litter and bedding, must be disposed of in an approved manner that may include composting.
8. Rodents, rats and mice being kept outside in urban areas must not be kept closer than 10 metres to a dwelling or a place that prepares, stores or handles food for sale.

Order 18 (11) – The Keeping of Horses (Donkeys) and Other Livestock not Covered in this Policy (referred to as Equines)

Objectives:

- To ensure that the satisfactory care and management of horses is maintained in the Muswellbrook Shire Local Government Area;
- To ensure that the keeping of ~~horses~~ **equines** does not adversely affect residents or the surrounding environment; and
- To ensure that ~~horse~~ **equines** owners comply with relevant government legislation.

Criteria:

Subject to compliance with the stables provisions of Council's Development Control Plan which includes but not limited to the following:

1. ~~Horses~~ **Equines** must not be kept within 10 metres of an adjoining property boundary or a dwelling, school, shop, office, factory, workshop, church or other place of public worship, public hall or premises used for the manufacture, preparation or storage of food. This distance may be varied on application in areas zoned for stable/horse keeping purposes (refer to the Local Environmental Plan).
2. The floors of stables must be paved with concrete, mineral asphalt or other equally impervious material, and must be properly graded to an approved drain.
3. ~~Horse~~ **Equines** yards must be so enclosed as to prevent the escape of horses.
4. Yarded ~~horses~~ **equines** must be provided with a loosebox or similar shelter.
5. The provision of protection from sun, rain, wind and extremes of temperature should be provided. The facilities must be of such a standard of construction and state of repair that prevents escape or injury to the **equines** ~~horse~~. Yards and other holding facilities must be of post and rail or similar construction. Paddock held ~~horses~~ **equines** may use natural cover, but rugging and constructed shelters should also be considered.

6. External and internal walls of stables are to be of brick or masonry construction of an approved design, and:
 - a. Be vermin resistant;
 - b. Have a minimum floor area of 12 square metres for every ~~pony~~ equine;
 - c. Have doors with a minimum height of 1.3 metres. The doors must open outward; and
 - d. Provide ventilation of such a standard that prevents dampness, avoids excessive odours and prevents draughts.
7. Where rail fences are not available, appropriate visual additions such as reflective tape, plastic pipe, and so on, must be used on all wire fences.
8. All fences must be of such construction and standard of maintenance that will reasonably ensure that ~~the horse~~ equines cannot escape and/or be injured.
9. No tethered ~~horse~~ equines may be on a roadway or public place, unless under the direct supervision of an adult.
10. ~~Horses~~ Equines on busy roadways must be under the direct care of a responsible adult.
11. No ~~horse~~ equines may be taken onto a public reserve, unless permission to do so has been obtained from Muswellbrook Shire Council.
12. The keeping of ~~horses or donkeys~~ equines on allotments less than 2500m² in area is not permitted.
13. No ~~horse~~ equines may be kept on a public place or vacant allotment within the Muswellbrook Shire Local Government Area.
14. Any stabled ~~horse~~ equines must be exercised at least daily for a minimum of 30 minutes and the time out of stables must be in excess of 2 hours.

15. Cleansing and Waste Requirements

- a. No impervious surfaces used by ~~horses~~ equines shall drain into any stormwater drainage system or waterway. All liquid waste shall be disposed of in a manner approved by Council.
 - b. Cleaning of all areas must be completed daily.
 - c. Provision of waste bin for solid matter and manure, such a waste bin must be cleaned out at least weekly. Council will allow certain forms of composting of stable waste on a case-by-case basis.
16. Suitable fire safety procedures must be provided. In the case of more than four individual stables (connected) and for all barn type stables, fire assessment and fire plans are required, including the provision of:
 - a. At least one exit to the outside per five stables;

- b. Exit width of 1.3 metres per stable, and an exit width of 2 metres for aisles. All doors are to open outwards;
- c. Fire hose reels, in working Order;
- d. Adequate water pressure;
- e. Feed and bedding storage in a separate and unconnected building; and
- f. Smoke detection equipment in working Order.

Order 18 (12) – The Keeping of Cattle

Objectives:

- To ensure a satisfactory standard of care and management for the keeping of cattle in the Muswellbrook Shire Local Government Area;
- Ensuring that the keeping of cattle does not adversely affect the community or the environment; and
- To ensure that cattle owners comply with relevant government legislation.

Criteria:

1. Cattle must not be within 10 metres (or such a greater distance as the council may determine in a particular case) of any premises.
2. The floors of stables must be paved with concrete or mineral asphalt or other equally impervious material, and must be properly graded to drain.
3. Cattle yards must be enclosed as to prevent the escape of cattle.
4. Where rail fences are not available, appropriate visual additions such as reflective tape, plastic pipe, and so on, must be used on all wire fences.
5. All fences must be constructed and up to a standard of maintenance so that the cattle cannot escape or be injured.
6. No cattle may be kept or taken onto a public reserve unless the permission of Council has been obtained.
7. No cattle may be kept on an allotment with an area of less than 2500m².
8. The keeping of cattle in townhouse or unit developments is not permitted.

Order 18 (13) – The Keeping of Poultry

Objectives:

- To ensure the satisfactory standard of care and management for the keeping of poultry in the Muswellbrook Shire Local Government Area;
- To ensure that the keeping of poultry does not adversely affect the community or the environment; and
- To ensure that poultry owners comply with relevant government legislation.

Criteria:

1. All poultry must be kept in accordance with the **Local Government (General) Regulation 2005 2021 Part 5, Schedule 2 – Division 2 clause 19/20**, 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* "chicken/chook") or guinea fowls must not be kept within 3 metres of an adjoining lot boundary nor within 4.5 metres of any dwelling, public hall, school or premises used for manufacture, preparation, sale or storage of food.
 - D. Other types of poultry of a species permitted in clause 8 below must not be kept within 30 metres of any building referred to in subclause C above.
 - 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 more than 15 metres from any dwelling, public hall or school; or
 - ii. that are situated on clean sand.
 - F. Poultry yards must be enclosed as to prevent the escape of poultry.
 - G. Poultry houses must not exceed 3 metres in height or 15 m² in floor area.
2. All food must be stored in sealed vermin proof containers and must not be left uncovered.
 3. All offensive noise, odours, vermin and other pests must be controlled.
 4. All poultry must be housed in purpose built facilities. Structures must satisfy the general area and development standards of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, or have development consent from Council.
 5. The slaughtering of poultry is not permitted.

6. Waste material, including litter and bedding, must be disposed of in an approved manner that may include composting.
7. Outside runs must be free draining, not to discharge to neighbouring properties and not be allowed to become muddy.
8. The total numbers of poultry (excluding pigeons, see 18(14)) kept on premises in an urban area must not exceed the maximum amount specified below:

Type	Maximum numbers
Peacocks and peahens	Nil
Roosters	Nil
Ducks	Nil
Geese	Nil
Swans	Nil
Turkeys	Nil
Fowls (chickens)	10
Pheasants	10
Quails	10
Pea Fowls	2
Pigeons	See Clause 18 (14)

Order 18 (14) – The Keeping of Pigeons

Objectives:

- To ensure the satisfactory care and management for the keeping of pigeons in the Muswellbrook Shire Local Government Area; and
- To ensure that the keeping of pigeons does not adversely affect the surrounding community or the environment.

Criteria:

The keeping of domestic homing, show or fancy class pigeons by hobbyists and racing enthusiasts in the

Muswellbrook Shire Local Government Area is permitted with the following control conditions applying:

1. A maximum 40 pigeons except as permitted for Racing Pigeons (see below) may be kept.
2. All pigeons must be housed in purpose built facilities. All aviaries/lofts and other built facilities for the keeping of caged birds including pigeons require prior Council development consent, except where aviaries/lofts do not exceed the following dimensions as prescribed by State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 Cl2.7.
 - a) A maximum 10 m² surface area, a maximum height of 2.4 metres and with a set back from any boundary, fence or wall of 900 millimetres; and
 - b) A maximum of 2 aviaries/lofts provided the total area does not exceed 10 square metres without prior Council approval.
3. The keeping of pigeons within unit or townhouse developments is not permitted.
4. **Racing Pigeons:** The maximum number of racing pigeons that may be kept on premises within an urban area is 150 birds, provided that the keeper is a certified member of a recognised pigeon racing club, federation or association is an active member of the sport and otherwise complies with other provisions of this local policy
5. Development Consent is required for any activity not considered a hobby including breeding pigeons for sale purposes.
6. Enclosed housing must use deep litter or other appropriate substrate.
7. Rodents other vermin and offensive odours must be vigorously controlled. All food must be stored in sealed vermin proof containers and must not be left uncovered.
8. Pigeons must not be kept within 9 metres of any dwelling or premises used for the sale, preparation, handling or storage of food for sale.
9. Positioning of pigeon lofts must be such that the amenity of adjoining premises is preserved, with no inconvenience or nuisance resulting from this activity or from flying birds. The pigeons' owner or the occupier of those premises must control feral pigeons attracted to captive managed flocks.
10. Waste must be disposed of in an approved manner.

11. Liberation of Pigeons (General)

Note: This section relates to the practice commonly referred to as homing

- a) The uncontrolled release of pigeons (free lofting) in an urban residential area is not permitted.
- b) Free flight exercise must be conducted on a planned basis, with duration time typically from 30 to 90 minutes and performed no more than twice daily.
- c) Free non-flight time must be conducted under close supervision by the owner.
- d) The exit and entry of these birds from a loft, aviary or cage must be fully controlled. Provision must be made for all released birds to return through a one-way entrance that will not permit uncontrolled exit.
- e) Appropriate landing boards must be provided to encourage the uninterrupted return of birds to the loft, aviary or cage.
- f) Every reasonable attempt must be made to retrieve birds that do not return.
- g) Birds must not be permitted to roost on neighbours' premises.
- h) Birds must be appropriately conditioned in their behaviour to ensure rapid and voluntary return to their enclosure after liberation.

Order 18 (15) – The Keeping of Sheep, Goats, Alpacas, Llamas, and Camels

Objectives:

- To ensure that sheep and goats are kept in a satisfactory manner in the Muswellbrook Shire Local Government Area;
- To ensure that the welfare of Sheep, Goats, Alpacas, Llamas, and Camels remains a priority;
- To ensure that the keeping of Sheep, Goats, Alpacas, Llamas, and Camels does not adversely affect nearby residents or property; and
- To ensure that the keeping of Sheep, Goats, Alpacas, Llamas, and Camels does not affect the surrounding environment.

Criteria:

1. No Sheep, Goats, Alpacas, Llamas, and Camels may be kept in a residential area on an allotment with an area less than 2500 square metres.
2. Sheep, Goats, Alpacas, Llamas, and Camels may not be kept within 10 metres of a dwelling, school shop, office, factory, workshop, church or other place of public worship, public hall or premises used for the manufacture, preparation or storage of food. ~~any premises or facility used for the commercial preparation or storage of food for human consumption.~~
3. Sheep, Goats, Alpacas, Llamas, and Camels are only permitted to be kept on land where suitable grazing exists.

4. The keeping of Sheep, Goats, Alpacas, Llamas, and Camels in townhouse or unit developments is not permitted.
5. No Sheep, Goats, Alpacas, Llamas, or Camels may be kept on a public place, including footpath areas and vacant allotments within the Muswellbrook Shire Local Government Area.
6. The slaughtering of Sheep, Goats, Alpacas, Llamas, and Camels is not permitted in urban areas unless within an approved facility.

Order 18 (16) – The Keeping of Non-Indigenous Animals Primates (Monkeys)

Objectives:

- To ensure the satisfactory care and management of non-indigenous animals in the Muswellbrook Shire Local Government Area;
- To ensure that the welfare of non-indigenous animals remains a priority; and
- To ensure that the owners keeping non-indigenous animals comply with the relevant government legislation and regulations.

Criteria:

1. All primates must have access to outside enclosures on most days.
2. Inside enclosures must maintain a temperature and humidity range that is appropriate to the species being kept.
3. All primates must be tested for tuberculosis annually, using an intradermal skin test that is conducted and assessed by a veterinary surgeon, confirming that a skin test for tuberculosis has been conducted and that the result was negative.
4. All owners of primates within the Muswellbrook Shire Local Government Area must provide the Council, each year, with a certificate prepared by a veterinary surgeon, confirming that a skin test for tuberculosis has been conducted and that the result was negative.
5. The certificate must include an opinion by the veterinary surgeon that the animal is healthy and is maintained in conditions that are suitable for the particular species.
6. The owner of any primate must agree to allow access to council officers at any reasonable time to inspect any premises where primates are kept.
7. Primates may only be held by private individuals under highly regulated circumstances. These include the provisions of a B class Zoo Licence, the *Exhibited Animals Protection Act 1986*, or otherwise under the licence provisions of the *Non-Indigenous Animals Act 1997*.
8. Appropriate licensing conditions as prescribed by NSW Agriculture must be complied with.
9. The standards and conditions of management and care prescribed by the *Exhibited Animals Protection Act 1986* must be fully complied with.
10. The primates must be held in a secure enclosure, unless under the direct supervision of an adult competent in the management and care of the primate.

11. Any enclosure used for the purposes of keeping primates must exceed the following dimensions:
12. **Species less than one kilogram in body weight** – indoor enclosure of 0.75 cubic metres, outdoor enclosure of at least 1.8 metres high and two cubic metres wide. Such an enclosure is suitable for small family groups. Building consent is required.
13. **Species between one kilogram and ten kilograms in body weight** – indoor enclosure of two cubic metres per animal, outdoor enclosure of five cubic metres per animal.
14. Enclosure must not be within 10 metres of any dwelling.
15. No species greater than ten kilograms may be held, except for individuals holding a B Class Zoo Licence.

Order 18 (17) – The Keeping of Squirrels

Criteria

1. Squirrels may only be held by private individuals under highly regulated circumstances. These include the provision of a B Class Zoo Licence, the *Exhibited Animals Protection Act 1986* or otherwise under the licence provisions of the *Non-Indigenous Animals Act 1997*.
2. All appropriate licensing conditions as prescribed by NSW Agriculture must be complied with.
3. The standards and conditions of management and care as prescribed by the *Exhibited Animals Protection Act 1986* must be fully complied with.
4. Squirrels must be held in a secure enclosure, unless under the direct supervision of an adult competent in the management and care of squirrels.
5. All squirrels must have access to outside enclosures on most days.
6. Inside enclosures must maintain a temperature and humidity range appropriate to the species.
7. The owner of squirrels must agree to allow access to council officers at any reasonable time to inspect any premises where squirrels are kept.

Order 18 (18) – The Keeping of Bees

Objectives:

- To ensure that the welfare of bees remains a priority;
- To ensure that the keeping of bees does not adversely affect nearby residents or property; and
- To ensure that the keeping of bees does not affect the surrounding environment.
- To ensure that the owners keeping bees comply with the relevant government legislation and regulations.

Criteria:

1. All beekeepers must be registered with the NSW Department of Primary Industries (NSW DPI) and must comply with the *Apiaries Act 1985*.
2. All beehives must be identified by branding all brood boxes with their registration number.
3. Beekeepers must notify the NSW DPI within 24 hours if they become aware that their hive/s are infected with a disease.
4. The aims, objectives and husbandry procedures as defined in the Beekeeping Code of Practice must be complied with.
5. Complaints about beehives are to be directed to the Director-General of the NSW DPI.

6. Urban Areas

In urban areas, where allotments are less than 2500m², no more than two hives is permitted, and then only when the following circumstances prevail:

- a. Only docile strains of bees should be kept;
- b. Beekeeper must obtain permission from the owners of private lands or from the authority of government controlled lands before placing beehives on such lands;
- c. Hives should not be located within the vicinity schools, child care centres, hospitals or other public facilities;
- d. A suitable barrier must be erected close to the landing board to force flight paths above two metres;
- e. Beehives should not be positioned in the front yard of houses.
- f. Swarming must be controlled. This may be achieved by re-queening regularly with a reduced swarming strain, population control or temporarily splitting into smaller hives.
- g. A permanent water source suitable for bees should be established within close proximity to the hive;
- h. The hive is not within 10 metres of any neighbouring swimming pool;
- i. Hive/s are regularly monitored for signs of disease; and

- j. The keeping of bees in unit and townhouse developments is not permitted.

Note – *Beekeepers are encouraged to increase and update their knowledge by attending training and/or belonging to a beekeeping association. In Order to keep more than two hives, development consent is required.*

7. Wild Hives

Wild hives must be controlled. Any person having a wild hive on their property must consult NSW Agriculture for advice.

A wild hive is described as feral bees not in a domesticated situation and not kept within a bee frame or a beekeeper's box.

Order 18 (19) – The Keeping of Pigs (Swine)

Objectives:

- To ensure the satisfactory standard of care for pigs (swine) in the Muswellbrook Shire Local Government Area;
- To ensure that the keeping of pigs (swine) does not adversely affect the community or the environment; and
- To ensure that the keeping of pigs (swine) complies with the relevant government legislation and regulations.

Criteria:

1. Pigs' dung and other waste must be disposed of in an approved manner on a daily basis.
2. Pigs must not be kept (and pigs dung must not be deposited) within 60 metres (or such greater distance as the council may determine in a particular case) of a dwelling, shop, office, factory, church or other place of public worship, workshop, school, a public place in a town or village or other urban part of an area. ~~a neighbouring property boundary.~~
3. No pigs may be kept in a residential area with an area of less than 2500 square metres.
4. Keeping pigs within units or townhouse developments is not permitted.
5. Pigs must be kept in an enclosed pig proof fence. Such fences must be 60 metres from the side and rear boundaries of the property.
6. Prior to the erection of any building or shed, a development application must be lodged to and approved by council.
7. The flooring of the building, shed or enclosure in which pigs are kept, must be constructed of an impervious material such as concrete or litter of some kind.
8. The building or shed that houses the pigs must be kept in good repair and in a clean and sanitary condition at all times.
9. Feeding troughs must be used and the troughs must be constructed of an impervious material.
10. All feed must be stored in vermin proof containers.
11. Noise must be controlled at all times.
12. All odours must be kept under control.

Order 18 (20) – The Keeping of Fish, Aquariums and Ponds

Objectives:

- To ensure the satisfactory standard of care for aquatic organisms in the Muswellbrook Shire Local Government Area;
- To ensure that the keeping of fish, aquariums and ponds does not adversely affect the community or the environment; and
- To ensure that all relevant guidelines, regulations and Australian Standards are complied with.

Criteria:

1. Water is to be maintained at clean and sufficient levels.
2. All noise from filtration pumps must not be used in a manner that creates a nuisance.
3. Ponds must contain shade of some kind. This may include aquatic plants.
4. Food must be made available that suits the species of aquatic organism(s). This may include aquatic plants.
5. Fish must be protected from predation. This may be done with fencing or a cover of some kind.
6. All fish and aquatic plants must be disposed of in a council approved manner. Council does not approve the dumping of fish and aquatic plants into any type of waterway, or anywhere that leads to one.
7. Ponds are required to be made child proof with a fence. The fence must comply with Australian Standard 1926. Applies to ponds more than 300 millimetres in depth.
8. Council approval is required for the construction of a pond that fails to meet the following requirements:
 - a) The pond is to be located at the rear of the yard and no closer than 900 millimetres to the nearest adjoining boundary;
 - b) The maximum surface area of the pond is to be 2 square metres;
 - c) The pond will not be capable of being filled to a greater depth than 300 millimetres;
 - d) The pond will not be constructed so that it prevents the natural flow of stormwater, drainage or runoff; and
 - e) The pond will not be constructed so that it is higher than 300 millimetres above the existing ground level.

Order 18 (21) – The Keeping of Reptiles

Objectives:

- To ensure satisfactory standards of care and management are met in regards to the keeping of all reptiles in the Muswellbrook Shire Local Government Area;
- To ensure that the keeping of reptiles does not adversely affect the surrounding community and the environment; and
- To ensure that all relevant government legislation and regulations are complied with.

Criteria:

1. All provisions of the *National Parks and Wildlife Act 1974* must be complied with. This includes obtaining a licence to keep reptiles.
2. Advice regarding the keeping of reptiles must be obtained from the National Parks and Wildlife Service.
3. It is prohibited to move a reptile from the natural environment.
4. Reptiles must be housed in a manner that provides appropriate environmental conditions suited to the particular species.
5. All reptiles must be housed in an adequate manner that prevents escape. Adequate housing includes, but is not limited to:

Snakes –

- a) Venomous snakes may only be kept in lockable, sealed, escape proof containers or cages within a lockable and sealed escape proof room;
- b) The individual containers and the room itself must be locked when the licensee is not present in the room, so as to prevent unauthorised entry and/or tampering with containers or cages and the escape of snakes;
- c) Access to all venomous snakes must be limited to persons who are under the direct supervision of the licensee or to persons holding a Class 2 licence with the same category endorsement;
- d) All housing for snakes must be kept in a clean condition;
- e) Muswellbrook Shire Council must approve all housing facilities for snakes.

Turtles –

- f) Ponds that house turtles must be cleaned on a regular basis;
- g) Basking logs and rocks must be available along and partly emerged in the pond to allow for stress free basking;
- h) Adult turtles (30 centimetres or greater shell length) require a 2 metres length by 2 metres width by a 0.5 metre depth (2m (L) x 2m (W) x 0.5m (D)), with gradual sides to allow easy exit;

- i) Turtles are to be in an enclosed area so as to prevent escape.
6. All offensive odours must be controlled.
 7. All noise must be controlled.
 8. The breeding of rats, mice or other live animals for the purpose of feeding any reptile is not permitted.
 9. All reptiles must be protected from the predation of other animals.
 10. Muswellbrook Shire Council strongly suggests that all reptile enthusiasts join a Reptile Keepers organisation.
 11. All reptiles must be kept in appropriate numbers.

Order 18 (22) – The Keeping of Native Wildlife

Objectives:

- To ensure the satisfactory care and management of injured native wildlife;
- To ensure that the keeping of injured native wildlife does not adversely affect the surrounding community or the environment; and
- To ensure that the carers of injured native wildlife comply with relevant government legislation.

Criteria:

1. No native animal may be taken from the wild and kept as a pet.
2. Carers of injured native wildlife must be a member of a licensed rehabilitation group and have completed the appropriate training courses for the caring of injured animals.
3. Injured wildlife must not create a nuisance of any kind to the surrounding community.
4. All offensive noise must be controlled.
5. All odours must be controlled.
6. Suitable facilities for the housing of injured animals must be available and used.
7. The caring of injured native wildlife in townhouse or unit developments is not permitted.
8. A Native Animal Keepers' licence is required to keep most native animals as pets (ie those bred in captivity). Contact the Office of Environment and Heritage's licencing unit for licencing requirements.

Order 19 - Use of tennis courts

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:

When determining whether an Order is to be given the following criteria are to be taken into consideration:

1. Tennis courts are not to be used after 10:00pm unless otherwise approved by development consent.
2. Tennis courts on private property shall not be used for commercial purposes (i.e. for hire to non-residents of the property) without development consent being issued.

Order 21 - Safe and healthy land and premises

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 an Order is to be given the following criteria are to be taken into consideration:

Land or premises would be considered not to be in a safe or healthy condition if the safety or the health of the owner or occupier of the land or premises, or members of the community, is detrimentally affected, or conditions, matters or things on the land or premises create or are likely to create a health or safety risk to any person. Action that can be required includes, but is not limited to, the following:

1. The abatement of dampness in walls and ceilings in any property.
2. The removal of defective floor timbers and stair treads and replacement with sound material.
3. The renewal or repair of waste pipes and sanitary fittings and flush pipe to water closet pans.
4. Renewal or repair of defective sewerage service pipes.
5. Clearing of choked sewerage service pipes.
6. Repair of defective septic tanks, pipes and absorption pits.
7. The removal of the following accumulations which are likely to afford harbourage to vermin or otherwise pose a threat to health and safety to any person:
 - i. disused and/or second hand building materials or household fixtures and fittings;
 - ii. dilapidated and/or abandoned motor vehicle or ancillary parts and accessories or machinery;
 - iii. dilapidated and/or abandoned boats, watercraft, trailers or caravans;
 - iv. disused and/or second hand containers, bottles, scrap metal, wastepaper, rags, rubbish or other scrap materials; and
 - v. tree trunks, tree stumps, organic material, vegetation or firewood.
8. Provision of suitable facilities for toilet, kitchen sink, bathing and for washing of clothes with hot and cold water provided.
9. Provision of suitable cooking facilities.
10. The treatment of an untreated swimming pool or excavation where the condition of the water within it is or is likely to be breeding mosquitoes.

11. The boarding up or fencing off of a dilapidated building to prevent unauthorised access where there is a safety issue and Order no. 7 cannot be used.
12. Cleaning of garbage containers and waste storage rooms or areas.
13. Disconnection of an electric fence from its energiser or otherwise render it inoperable.
14. Removal of petroleum storage tanks (underground and overground).

Order 22 - Waste on land or premises

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 the 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 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.

To Whom?

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:

When determining whether an Order is to be given the following criteria are to be taken into consideration:

1. The standards for the disposal of certain waste set out in Part 6 of Schedule 2 of the Local Government (General) Regulation 2021.
2. Waste is being stored on land or premises for collection by Council not in the approved impervious receptacles with close-fitting lids that are provided for this purpose.
3. Where waste is present on land or premises and is not being properly stored, collected or removed satisfactorily from those premises.
4. Where there is a defective on-site sewage management system.
5. Where there is disposal of human waste on site without an approved method of waste disposal.

Order 22A - Remove Waste from land

To do what?

To remove or dispose of waste that is on any residential premises or to refrain from keeping waste on those premises.

In What Circumstances?

The waste is causing or is likely to cause a threat to public health or the health of any individual.

To Whom?

Owner or occupier of the premises.

Criteria:

No additional criteria.

Order 23 - Connection to water supply

To Do What?

To connect premises to the council's water supply by a specified date

In what Circumstance?

The premises are situated within 225 metres of a water pipe of the council

To Whom?

Owner or occupier of land

Criteria:

No additional Criteria.

Exceptions:

The premises is less than ten years old and provision has been made for a wholesome water supply of more than 60,000ltrs.

Order 24 - Connection to sewerage system

To Do What?

To connect premises with a sewerage system by a specified date

In what Circumstance?

The premises are situated within 75 metres of a sewer of the council

To Whom?

Owner or occupier of land

Criteria:

No additional Criteria.

Exceptions

The premises is less than ten years old and an effective on-site sewage management system is being operated in accordance with licence conditions.

Order 25 - Human waste storage facility on premises

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:

The human waste storage facility is so defective or poorly designed so as to potentially or actually permit human waste to discharge or overflow from the storage facility in such a manner to be a danger to the health of the public.

Criteria Does Not Include:

Where the use of human waste storage facilities is capable of being regulated by the Department of Environment and Conservation, Council may not make an Order No. 25.

Order 27 - Object or matter in a public place

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 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.

To Whom?

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

Criteria:

When determining whether an Order is to be given the following criteria are to be taken into consideration.

1. An Obstruction interrupts, make difficult or opposes the passage, progress or course of a person.
2. Object or matter is any article, item or thing which is visible and tangible and can include but is not limited to:
 - a. advertising sign, advertisement generally;
 - b. motor vehicles or motor vehicle parts;
 - c. caravans or caravan parts;
 - d. trailers/boats or trailer/boat parts;
 - e. machinery, equipment and appliances;
 - f. second hand materials including building materials;
 - g. demolition materials;
 - h. scrap materials;
 - i. sand, soil rock, blue metal and any other material derived from any construction or dredging process;
 - j. any organic or vegetative material;
 - k. any industrial or commercial waste product;

- l. any household fixtures, rubbish or waste.
- m. second hand containers, bottles, scrap metal, waste paper, rags, or rubbish;
- n. any recycled or composted material.

Criteria Does Not include:

1. The placing of articles on a public place during a designated period of a Council clean up provided these articles do not breach conditions in the circumstances (a) and (b). above.
2. The display of goods on footpaths and public places for which an approval has been obtained from Council and a licence agreement entered into in accordance with the provisions of relevant Muswellbrook Shire Council's policies.
3. The placement of outdoor dining facilities and other items on footpaths and public places for which an approval has been obtained from Council and a licence agreement entered into in accordance with the provisions of relevant Muswellbrook Shire Council's policies.

Order 28 - Damage to a public place

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.

To Whom?

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

Criteria:

When determining whether an Order is to be given the following criteria are to be taken into consideration:

1. There is no approval issued by Council.
2. The work is not in accordance with approval granted by Council.

Order 29 - Work or structure in a public place

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:

When determining whether an Order is to be given the following criteria are to be taken into consideration:

1. The work or structure on, over or under the public way is not in accordance with an approval or is considered unsafe or dangerous.
2. Repairs are required to private services within a public place such as, but not limited to, sewer services and roof water / stormwater pipes that are not covered by lease agreements.
3. Driveway crossings which are not being maintained in a safe condition.
4. Shop awnings which are not being maintained in a safe or sightly condition.
5. Maintenance of underground pipes within a public place.

Order 30 - Compliance with approvals

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:

When determining whether an Order is to be given the following criteria are to be taken into consideration:

1. An approval granted by Council under the Local Government Act or Regulations has not been complied with.
2. Conditions of an approval granted by Council under the Local Government Act or Regulations have not been complied with.

Additional Provisions of Policy

Copies of Certain Orders to be Provided to the Environment Protection Authority

If Council gives Order No 11, 12, 18, 21 or 25 in respect of land or premises and the land or the land on which the premises are situated is the subject of a contaminated land action, the Council must provide the EPA with a copy of the Order and of any modification or revocation of it.

Failure to provide the EPA with a copy does not invalidate an Order, modification or revocation. "Contaminated land action" means a current action under the Contaminated Land Management Act 1997 comprising:

- a) a declaration or Order made under Part 3 of that Act in respect of which the EPA has notified the Council under s59 of that Act, or
- b) a voluntary proposal in respect of which the EPA has notified the Council under s59 of that Act, but which has not yet been fully carried out, or
- c) a notice to maintain remediation action issued by the EPA under s28 of that Act, or
- d) a covenant to maintain remediation imposed by the EPA under s29 of that Act. (Clause 97 Local Government (General) Regulation ~~2005~~ 2021).

Delegations

The General Manager shall be responsible for the implementation of the provisions of this policy and responding to any complaints to Council issued Orders.

All employees who deal with complaints and the enforcement of the Local Government Act 1993, including the issuing of Orders, are responsible for adhering to this policy.

Legislation

Apiaries Act 1985

Companion Animals Act 1998

Companion Animals Amendment Act 2001 and 2006

Companion Animals Regulation 2008

Contaminated Land Management Act 1997

Environmental Planning and Assessment Act 1979

Exhibited Animals Protection Act 1986

Food Act 2003

Food Regulation 2015

Home Building Act 1989

Local Government (General) Regulation ~~2005~~ 2021

Local Government Act 1993

National Parks and Wildlife Act 1974

Non-Indigenous Animals Act 1997

Protection of the Environment Operations Act 1997 (or more recent Act)

Public Health Act 2010

Public Health Regulation 2012 2022

Roads Act 1993

Swimming Pool Act 1992

Water Management Act 2000

Dispute Resolution

All complaints are to be submitted to the Assistant Director Environment and Community Services who authorises the issuing of Orders. If a person wishes to escalate a complaint, they can do that by writing to the General Manager who has an authority to make a final decision in regard to a disputed Order.

Associated Council Documentation

Muswellbrook Local Environmental Plan 2009

Muswellbrook Development Control Plan 2009

Authorisation Details

Authorised by:	Council
Minute No:	
Date:	
Review timeframe:	30 December 2025
Department:	Integrated Planning, Risk and Governance
Document Owner:	Director Environment and Planning

Details History

Version No.	Date changed	Policy type	Modified by	Amendments made
1	12 March, 2019	Council	Sharon Pope	Original Policy
2	11 October, 2022	Council	Sharon Pope	Updates to reflect changes to the Local Government Act 1993, Local Government Act (General) Regulations 2021 and related Acts and Regulations.