

POLICY– COUNCIL

Local Government Act Order Making Policy

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1. Document control

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2. Preamble

The contents of and the commitments that council makes in this policy are not intended to be and should not be interpreted to be any more than a statement of the City of Onkaparinga's general position in relation to those matters, and to facilitate its aspirations wherever it is reasonable to do so.

This Order Making Policy is prepared and adopted pursuant to Section 259 of *the Local Government Act 1999* (the Act) and sets out the steps Council will take in the making of orders.

The exercise of the Council's order-making power, in accordance with this policy and relevant statutes, co-exists with the Council's other regulatory powers. The Council has power to make and enforce by-laws in certain circumstances and to enforce compliance with the requirements of the Act and a range of other legislation.

It is acknowledged that any legislative requirement which affects Council will take precedence over Council's policies and procedures.

3. Policy purpose

Council is committed to using the order making powers available to it under the Act in such a way as to facilitate a safe and healthy environment, to improve the amenity of a locality and generally for the good governance of its area.

4. Scope

Section 259 of the Act requires each council to take reasonable steps to prepare and adopt policies concerning the operation of Part 2 of Chapter 12 of the Act. Part 2 deals with the making of orders.

This policy will apply to those circumstances listed in Section 254 which states that council may order a person to do or refrain from doing a thing under certain circumstances, as specified in the table included within that Section of the Act (refer Attachment 1).

In accordance with the requirements of the Act, this policy also applies in respect of orders issued by council under Section 216 (power to order the owner of private road to carry out specified roadworks) and Section 218 (power to require owner of adjoining land to carry out specified work)

Local nuisances (other than those found in the Act) are also contained in the *Local Nuisance and Litter Control Act 2016*. Nuisance and littering actions that fall within the jurisdiction of the *Local Nuisance and Litter Control Act* will be dealt with in accordance with the procedures set out in that Act.

5. Policy principles

When considering making an order within the scope of this policy council will consider the following principles, which are considered central to the effective resolution of matters within the scope of this policy:

Openness	We will provide information and advice in plain language about the legislation we apply and will publicise this as widely as possible. We will discuss general issues and specific problems with anyone experiencing difficulties.
Helpfulness	We will provide a courteous, efficient and helpful service. Our staff will identify themselves by name and provide a contact point and telephone number for further dealings with us. We will ensure that our enforcement services are effectively co-ordinated to minimise unnecessary delays.
Feedback	We will actively seek the views of those that receive our services and use this information to develop our service. We will provide well publicised, effective and timely complaints procedures that are easily accessible to all our customers.
Fairness and risk	We will minimise the cost of compliance by ensuring that any action we require is proportionate to the seriousness of the breach of legislation. As far as the law allows we will take account of the circumstances and attitude of offenders when considering action. We will listen to the views of those who have been affected by the problem that we have been investigating.
Targeting	We will prioritise our activities according to the seriousness of the problem and the degree of benefit experienced by our customers as a result of successful resolution. We will make regular assessments of our resources and allocate them to support these priorities.
Corporate enforcement	We will work with other sections, departments and authorities towards effective enforcement activity. We will do this by means of exchanging information and joint working initiatives.
Graduated response	Enforcement action will generally be implemented through a staged graduated response however should the breach be significant, repeated or pose a significant risk to community safety it may be necessary to escalate our enforcement response more quickly.

6. Strategic context

Performance: We will support the community (individuals and groups) in maintaining the amenity, safety and health of the area, that is attractive to live in, work and visit and strive to ensure that the amenity of the area is enhanced or maintained. We efficiently and effectively deliver services, balancing cost, quality and responsiveness to community needs.

7. Policy

7.1 APPROACH TO ORDER MAKING

In coming to a decision on the most appropriate course of action we will be guided by:

- the seriousness of the offence
- the degree of wilfulness involved
- the offender's past history
- the consequences of non-compliance
- the likely effectiveness of the various enforcement options
- the need for deterrence
- consistency of approach to similar breaches/offences

Factors to be ignored when choosing an enforcement strategy:

- any element of discrimination or bias against the person such as ethnicity, nationality, political association, religion, gender, sexuality or beliefs
- personal association or relationship with the alleged offender or any other person involved
- possible political advantage or disadvantage to a government or any political group or party

7.2 SERVICE OF ORDERS

Procedures are laid out within the Act for making and revoking orders and for advising the person of a proposed order and inviting submissions with respect to the matter (pre-orders). Orders require the recipient to comply with the terms of the order. Most orders allow a lesser or greater amount of time for this, depending on the urgency of the matter.

Except in the case of an emergency described below, before making an order we will give notice of our intention to make an order in accordance with Section 255 of the Act by:

- Giving the person to whom an order is intended to be directed a notice in writing stating the:
 - proposed action
 - terms of the proposed order (i.e. what it requires the person to do or refrain from doing)
 - period within which compliance with the order will be required
 - penalties for non-compliance
 - reasons for the proposed action; and
- Inviting the person notified of the opportunity to give reason/s, within a specified time, why the proposed action should not be taken.

We may proceed to make an order without negotiation or notice, in accordance with Section 255(12) where the circumstance or activity constitutes, or is likely to constitute:

- a threat to life; or
- an immediate threat to public health or public safety; or
- an emergency situation.

7.3 REVIEW RIGHTS

Pursuant to Section 256 any person to whom an order is issued (including an order issued under Sections 254, 216 or 218 of the Act) has a right of appeal against the order. Any such appeal must be lodged within 14 days of that person's receipt of the order. We will ensure that reference to this right is included in any order served.

7.4 NON-COMPLIANCE WITH AN ORDER

If an order is not complied with within the time fixed for compliance (or if there is an application for review, within 14 days after the determination of the review) we may (subject to the outcome of any review) take the action required by the order.

The reasonable costs and expenses incurred in taking action under this section may be recovered as a debt from the person who failed to comply with the requirements of the order.

Where an amount is recoverable, we may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid. If the amount is not paid by the person within that period the person is liable to pay interest and a charge may be imposed over the land for the unpaid amount, together with interest, in accordance with Section 257(5) of the Act.

Non-compliance with an order is an offence for which a person may incur a statutory penalty provided for in the Act. Section 258 of the Act provides for a maximum penalty of \$2,500 and an expiation fee of \$210 for failure to comply with an order.

7.5 RESPONSIBILITIES AND DELEGATIONS

The policy will be administered by Authorised Persons who have been appointed (in writing) by council under Section 260 of the Act.

Council may also choose to delegate power to issue orders under Sections 254, 216 and 218 of the Act to council staff, in which case, council will ensure appropriate delegations are in place.

8. Relevant legislation and references

Local Government Act 1999, Section 254 to 259 inclusive, Section 216 and Section 218.

9. Council endorsement of the policy

Any amendments or alteration to the policy or a substitution of a new policy, will be subject to the future public consultation provisions under Section 259 (2) of the Act unless the alteration has only minor significance and is likely to attract little or no community interest.

10. Further information

This policy is available for inspection, during business hours at:

City of Onkaparinga, Ramsay Place, NOARLUNGA CENTRE SA 5168.

It is also available for inspection, downloading or printing from our website

www.onkaparingacity.com

Appendix 1

Local Government Act 1999

254—Power to make orders

216—Power to order owner of private road to carry out specified roadwork

218—Power to require owner of adjoining land to carry out specified work

Attachment 1

254—POWER TO MAKE ORDERS

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

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
2. Hazards on lands adjoining a public place		
(1) To fence, empty, drain, fill or cover land (including land on which there is a building or other structure).	(1) A hazard exists that is, or is likely to become, a danger to the public.	(1) The owner or occupier of the land.
(2) To remove overgrown vegetation, cut back overhanging branches, or to remove a tree.	(2) The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place.	(2) The owner or occupier of the land.
(3) To remove or modify a flag or banner, a flagpole or sign, or similar object or structure that intrudes into a public place.	(3) The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place.	(3) The owner or occupier of the land.
(4) Where the public place is a road—to take action necessary to protect the road or to remove a hazard to road users.	(4) A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.	(4) The owner or occupier of the land.

Examples—

To fill an excavation, or to prevent drainage of water across the road.

To construct a retaining wall or to remove or modify a fence.

To fence land to prevent the escape of animals.

To remove a structure or vegetation near an intersection.

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
4. Inappropriate use of vehicle		
To refrain from using a caravan or vehicle as a place of habitation.	A person is using a caravan or vehicle as a place of habitation in circumstances that— (a) present a risk to the health or safety of an occupant; or (b) cause a threat of damage to the environment; or (c) detract significantly from the amenity of the locality.	The owner or occupier of the land or a person apparently occupying the caravan or vehicle.

(2) A reference in the table to an animal or animals includes birds and insects.

216—POWER TO ORDER OWNER OF PRIVATE ROAD TO CARRY OUT SPECIFIED ROADWORK

- (1) A council may, by order in writing to the owner of a private road, require the owner to carry out specified roadwork to repair or improve the road.
- (2) Divisions 2 and 3 of Part 2 of Chapter 12 apply with respect to—
 - (a) any proposal to make an order; and
 - (b) if an order is made, any order, under subsection (1).

218—POWER TO REQUIRE OWNER OF ADJOINING LAND TO CARRY OUT SPECIFIED WORK

- (1) A council may, by order in writing to the owner of land adjoining a road, require the owner to carry out specified work to construct, remove or repair a crossing place from the road to the land.
- (2) Divisions 2 and 3 of Part 2 of Chapter 12 apply with respect to—
 - (a) any proposal to make an order; and
 - (b) if an order is made, any order, under subsection (1).