

ORDER MAKING POLICY	
Statutory Policy	
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1. POLICY STATEMENT

- 1.1 Council is committed to using the order making powers available to it under the *Local Government Act 1999* (the Act) to facilitate a safe and healthy environment, to improve the amenity of a locality, and for the good governance of its area.

2. PURPOSE

2.1 Purpose

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

2.2 Scope

- 2.2.1 Section 259 of the Act requires Council to take reasonable steps to prepare and adopt policies concerning the operation of Part 2 of Chapter 12 of the Act - making of orders.
- 2.2.2 This Policy applies to the 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.
- 2.2.3 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), Section 217 (power to order owner of infrastructure on road to carry out specified maintenance or repair work), and Section 218 (power to require owner of adjoining land to carry out specified work).
- 2.2.4 Local nuisances found in the Act will be captured by this Policy and all other 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.

2.3 Strategic Reference

5 Governance and Financial Sustainability

- 5.5 We meet or exceed legislative and accreditation requirements for all relevant programs.

3. PRINCIPLES

- 3.1 When considering making an order Council will consider the following principles, which are central to the effective resolution of local nuisances on private land. Each case for the possible use of the order making powers will be considered on its merits, as following:
- whether the matter arises from a complaint, observation or inspection, and any particular material in writing which had been provided in support of the factors
 - whether there is sufficient evidence upon which Council may rely to exercise its order making powers
 - whether the particular matter arises from a neighbourhood dispute, is fictitious or trivial
 - the severity of the incident

- e) whether there is a hazard or danger posed to the community
- f) whether there is a risk to health or safety of the community
- g) whether there is a detraction from the amenity of the locality
- h) are there any nuisance factors to be taken into account
- i) is the alleged breach significant or substantial
- j) is the particular activity a repeat occurrence and/or what happened on previous occasions to resolve the particular matter
- k) impact of any previous actions to overcome the problem
- l) number of complaints received in respect of the matter (if any)
- m) would an informal warning letter be sufficient
- n) have there been any informal discussions with the alleged offender or letter of inquiry in relation to the particular matter
- o) are there any conflict of interests, or contract arrangements in relation to the particular matter
- p) is there an impact or possible impact on the environment
- q) what is the alleged offender's attitude
- r) what is the complainant's attitude

3.2 Except in the case of an emergency, Council will take reasonable steps within available resources, to resolve cases of local nuisance by negotiation and agreement before issuing an order including personal approach by Council Officers and providing an informal warning letter prior to commencing the formal order making process.

3.3 Except in the case of an emergency, before making an order Council will give notice of its intention to make an order in accordance with Section 255 of the Act by:

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

3.4 Emergency Issue

Council will proceed to make an order without negotiation or notice, in accordance with Section 255(12) of the *Local Government Act 1999* where Council considers the circumstances or activity constitutes, or is likely to constitute:

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

3.5 Rights of Review

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 to appeal against the order. Any such appeal must be lodged within 14 days of that person's receipt of the order. The Council will ensure that reference to this right of review is included in any order issued.

3.6 Non-Compliance with an Order

- 3.6.1 If the requirements of an order are not met within the time fixed for compliance, (or if there is an application for review within 14 days after the determination of the review), the Council may (subject to the outcome of any review) take the action required by the order.
- 3.6.2 The reasonable costs and expenses incurred by a Council in taking action under this section may be recovered by the Council as a debt from a person who failed to comply with the requirements of the order.
- 3.6.3 Where an amount is recoverable by Council, Council 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 and, if the amount is not paid by the person within that period, the person is liable to pay interest and Council may impose a charge over the land for the unpaid amount, together with interest, in accordance with Section 257(5) of the Act.
- 3.6.4 Non-compliance with an order of Council 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 issued under the Act.
- 3.6.5 Where an order is issued under Section 217, if the order is not complied with within the time specified the Council may
 - a) carry out the action required by the order and recover the cost of doing so as a debt for the owner, and
 - b) The owner will be guilty of an offence and liable to a maximum penalty not exceeding \$5,000.

4. RESPONSIBILITY & REVIEW

4.1 Responsible Officer

Director Infrastructure

This policy will be enforced by Authorised Persons who have been appointed by the Council under Section 260 of the Act. Council may also choose to delegate the power to issue orders under Section 254, 216, and 218 of the Act to Council staff, in which case, Council will ensure appropriate delegations are in place.

4.2 Availability

This policy will be available on Council's website.

4.3 Review

This policy will be reviewed within 12 months of a General Election for Local Government, or as required to meet other obligations.

Any future amendment, alteration or substitution of the policy, will be subject to the 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.

5. REFERENCES

5.1 Legislation

Local Government Act 1999