Order Making Policy
<table>
<thead>
<tr>
<th><strong>Reference Number:</strong></th>
<th>CR15/18575</th>
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<tbody>
<tr>
<td><strong>Type:</strong></td>
<td>Council Policy</td>
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<tr>
<td><strong>Responsible Director:</strong></td>
<td>Director Corporate Services</td>
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<tr>
<td><strong>Responsible Officer(s):</strong></td>
<td>Manager Governance &amp; Administration</td>
</tr>
<tr>
<td><strong>Initial Adopted Date:</strong></td>
<td>Council on 14 September 2010</td>
</tr>
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<td><strong>Last Review Date:</strong></td>
<td>June 2015</td>
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<td><strong>Next Review Date:</strong></td>
<td>March 2019</td>
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1 Purpose

1.1 The Order Making Policy (the "Policy") details Council's authority to make orders to protect the community from public hazards and nuisances and lists the penalties applicable for non-compliance with an order, pursuant to of the Local Government Act 1999 (the "Act").

2 Scope

2.1 The Policy will apply to those circumstances listed in Section 254 which states 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).

2.2 In accordance with the requirements of the Act, the 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 218 (power to require owner of adjoining land to carry out specified work) and Section 299 (vegetation clearance).

3 Definitions

3.1 "the Act" means the Local Government Act 1999.

3.2 authorised person means a person appointed by a council as an authorised person under Chapter 12 Part 3 of the Act.

4 Legislative and Corporate Requirements

4.1 The Order Making Policy is to be read and implemented in conjunction with Council’s other relevant policies, strategies and documents, including:

   4.1.1 Local Government Act 1999

   4.1.2 Council’s By-Laws

   4.1.3 Council’s Order Making Procedure

5 Policy Statement

5.1 Council is committed to using the order making powers available to it under the Local Government Act 1999 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.

6 Responsibilities & Delegations

6.1 The Policy will be enforced by an Authorised Person (who has been appointed (in writing) by Council under Section 260 of the Act.

6.2 Council has delegated the power to issue orders under Sections 254, 216, 218 and 299 of the Act to the CEO.

7 Guiding Principles

7.1 When considering making an order within the scope of the policy Council will consider the following principles, which are considered central to the effective resolution of local nuisances on private land:
• Severity or seriousness of the incident
• Extent of hazard/danger posed to the community
• Nature and level of risk to health/safety of the community
• Extent of detraction from the amenity of the locality
• Impact on the environment
• Repeated occurrence of the activity /incident (e.g. duration, duration, previous offences)
• Impact of any previous actions to overcome the problem
• Is the breach significant/substantial?
• Would an informal warning letter be sufficient?
• Are there any public interest issues?
• Whether there is sufficient evidence upon which Council may rely to exercise its order making powers
• The offender’s attitude
• Number of complaints received in respect of the matter (if any)
• Implications of not taking any action

6.2 In the case of Section 299 (Vegetation Clearance Orders) Council will only exercise its order making powers in the most extreme situations where threat of damage to persons or property exist and all other avenues for resolution of the dispute have been exhausted.

8 Process and Procedure

8.1 Except in the case of an emergency described below, Council will take reasonable steps, within available resources, to resolve cases of local nuisance by negotiation and agreement and/or informal letter or flyer before issuing an order.

8.2 Except in the case of an emergency described below, before making an order Council will give notice of its 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; and
  - 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.
8.3 Council will proceed to make an order without negotiation or notice, in accordance with Section 255(12) where Council considers the circumstance or activity constitutes, or is likely to constitute:-

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

9 Vegetation Clearance Orders

9.1 Any person seeking to have Council make an order under Section 299 (Vegetation Clearance) must provide sufficient information to satisfy Council that the encroaching vegetation comprises a threat of damage to persons or property and that the applicant has exhausted all other means of resolving the dispute. This information must include:

- Details of the applicant's name and property
- The tree species, size and position/s and the impact on the applicant and their property
- Reports from suitably qualified experts regarding the tree and any building allegedly being damaged. Where the allegation is that the tree impacts on the applicant and/or their family's health through allergies and the like, the applicant must produce medical evidence to support the claim.
- Details and evidence of all discussions, negotiations and attempts to resolve the matter with their neighbour, and an indication of whether they are prepared to meet the cost of the tree's removal, or at the very least, to contribute to these costs.

9.2 Each situation will be assessed on its merits. This assessment will include a thorough inspection of the properties by an appropriately qualified and experienced person who will make a determination of the likelihood of the threat to life or property. Where that person determines that there is no evidence of a threat to life or property and no likelihood of it occurring in the immediate future, then Council will not make an order for the owner or occupier to complete any work on the vegetation.

9.3 Council may seek an independent assessment of the risk to private or public safety as part of its assessment.

9.4 Many issues surrounding vegetation encroaching private property boundaries can be legally dealt with by one of the parties removing the encroaching vegetation and returning it (often over the fence) to the property where the vegetation originates from. This action is entirely lawful and does not require any support from a Council or an order pursuant to Section 299 of the Local Government Act 1999.
9.5 Persons may also apply to the Magistrates Court to have a dispute between neighbours determined. Section 3(1) of the Magistrates Court Act 1991 defines “neighbourhood dispute” as “A dispute between neighbours, or the occupiers of properties in close proximity, based on allegations of trespass or nuisance.”

10 Review Rights

10.1 Pursuant to Section 256 any person to whom an order is issued (including an order issued under Sections 254, 216, 218 or 299 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. Council will ensure that reference to this right of review is included in any order issued.

11 Non-compliance with an order

11.1 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) the Council may (subject to the outcome of any review) take the action required by the order.

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

11.3 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.

11.4 A person who contravenes or fails to comply with an order under this Part (Local Government Act 1999, Regulatory functions — Chapter 12, Orders—Part 2) is guilty of an offence. Section 258 of the Act provides for a maximum penalty of $2,500 and an expiation fee of $210.

12 Review

12.1 The Policy will be reviewed once per Council term or as required by legislation.

13 Access to the Policy

13.1 The Policy is available for public inspection on Council's website www.prospect.sa.gov.au and from Customer Service at the Civic Centre, 128 Prospect Road, Prospect SA 5082.

14 Further Information

14.1 For further information about the Policy please contact:

Director Corporate Services
City of Prospect
128 Prospect Road
Prospect SA 5082

Phone: 8269 5355
Email: admin@prospect.sa.gov.au
Local Government Act 1999

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.

<table>
<thead>
<tr>
<th>Column 1</th>
<th>To do or to refrain from doing what?</th>
<th>Column 2</th>
<th>In what circumstances?</th>
<th>Column 3</th>
<th>To whom?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Unsightly condition of land</td>
<td>To take action considered by the council to be necessary to ameliorate an unsightly condition.</td>
<td>Land, or a structure or object on land, is unsightly and detracts significantly from the amenity of the locality in which the land is situated.</td>
<td>The owner or occupier of the land.</td>
<td></td>
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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). A hazard exists that is, or is likely to become, a danger to the public. The owner or occupier of the land.

(2) To remove overgrown vegetation, cut back overhanging branches, or to remove a tree. The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place. 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. The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place. 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. A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users. 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.
<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>To do or to refrain from doing what?</strong></td>
<td><strong>In what circumstances?</strong></td>
<td><strong>To whom?</strong></td>
</tr>
<tr>
<td><strong>3. Animals that may cause a nuisance or hazard</strong></td>
<td>A person is keeping or dealing with (or failing to deal with) an animal or animals (whether the animal or animals are alive or dead) so as to cause, or to be likely to cause, a nuisance or a hazard to health or safety.</td>
<td>The owner or occupier of land or any person apparently engaged in promoting or conducting an activity.</td>
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<tr>
<td></td>
<td>A person is the owner or occupier of land where an animal or animals are located which may cause, or be likely to cause, a nuisance or a hazard to health or safety, or otherwise to become a pest.</td>
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<tr>
<td></td>
<td><strong>Examples—</strong></td>
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<td></td>
<td>(1) The slaughtering of animals in a town or urban situation.</td>
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<td></td>
<td>(2) Keeping an excessive number of insects, birds or other animals.</td>
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<td></td>
<td>(3) Keeping bees in close proximity to other property.</td>
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<td></td>
<td>(4) Keeping animals so as to generate excessive noise, dust or odours, or to attract pests or vermin.</td>
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<td></td>
<td>(5) <strong>Attachment 1 continued</strong></td>
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<td></td>
<td>(5) Keeping an animal in a situation where it cannot be adequately contained or may cause danger to the public.</td>
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<td>(6) Failing to deal with a wasp's nest.</td>
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<td><strong>4. Inappropriate use of vehicle</strong></td>
<td>A person is using a caravan or vehicle as a place of habitation in circumstances that—</td>
<td>The owner or occupier of the land or a person apparently occupying the caravan or vehicle.</td>
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<tr>
<td></td>
<td>(a) present a risk to the health or safety of an occupant; or</td>
<td></td>
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<td></td>
<td>(b) cause a threat of damage to the environment; or</td>
<td></td>
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<tr>
<td></td>
<td>(c) detract significantly from the amenity of the locality.</td>
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<tr>
<td></td>
<td>(2) A reference in the table to an animal or animals includes birds and insects.</td>
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**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).

### 299—Vegetation clearance

(1) A council may, on the application of the owner or occupier of the land (the **relevant land**), by order under this section, require the owner or occupier of adjoining land to remove or cut back vegetation encroaching on to the relevant 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).