

Order Making Policy

Reference Number:	CR20/47435
Type:	Council Policy
Responsibility:	Corporate Services
Responsible Officer (s):	Governance Advisor
Initial Adopted Date:	September 2010
Last Review Date:	Updated September 2020
Next Review Date:	November 2020
Legislation:	Local Government Act 1999
Related Documents:	Council's By-Laws Council's Order Making Procedure

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) and Section 218 (power to require owner of adjoining land to carry out specified work).
- 2.3 Local nuisances (other than those found in the Local Government 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.

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 Policy Statement

- 4.1 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.

5 Responsibilities & Delegations

- 5.1 The Policy will be enforced by an Authorised Person (who has been appointed (in writing) by Council under Section 260 of the Act.
- 5.2 Council has delegated the power to issue orders under Sections 254, 216, and 218 of the Act to the CEO.

6 Guiding Principles

- 6.1 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

7 Process and Procedure

- 7.1 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.
- 7.2 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.
- 7.3 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.

8 Review Rights

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

9 Non-compliance with an order

- 9.1 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.
- 9.2 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.

- 9.3 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.
- 9.4 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.

10 Review

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

11 Access to the Policy

- 11.1 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.

12 Further Information

- 12.1 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

Appendix A – Extract of the 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.

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— <ul style="list-style-type: none"> (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.

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).