

# ORDER MAKING POLICY

13 August 2019

legislative

## PURPOSE

In accordance with Section 259 of the *Local Government Act 1999 SA* (the Act) Council must adopt an Order Making Policy governing the City of Adelaide's (CoA's) responsibilities to take measures to protect the area from hazards and to improve the amenity of the City. The City of Adelaide is committed to utilising the order making powers provided for by the Act to consistently facilitate a safe and healthy environment, and to ensure decisions are fair and equitable.

Further to the above and in accordance with the requirements of the Act, this Policy also applies in respect of orders issued by Council under *Division 4 – Power to require others to carry out work*; Sections 216, 217, and 218 of the Act.

## OPERATION

This policy informs the actions of persons who are authorised under the provisions of section 260 of the Act.

This Policy will apply to:

- circumstances listed in section 254 of the Act 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 (Attachment A)
- circumstances set out in sections 216, 217 and 218 of the Act which states that Council may order the owner of a road or structure installed in, on, across or under a road to carry out specified under certain circumstances (Attachment B)
- conduct that constitutes a contravention of the Act or By-Laws under the Act as provided for in section 262 of the Act which states that Council may order an offender to stop the conduct and/or remedy the contravention (Attachment C)

### **application of this document**

Each instance which may result in the use of Council's order making powers will be considered on its merits. Factors to be considered include:

- Severity of the incident
- Hazard/danger posed to the community
- Risk to health/safety of the community
- Detraction from the amenity of the locality
- Repeated occurrence of the activity/incident (e.g. duration, previous offences)
- Impact of any previous actions to overcome the problem
- Significance of the breach
- Likely effectiveness of alternative enforcement options

- Issues of public interest
- Whether there is sufficient evidence upon which Council may rely to exercise its order making powers
- Number and nature of reports received in respect of the matter (if any).

Council will take reasonable steps to resolve issues by negotiation and agreement before issuing an order.

Before making an order (except in the case of an immediate risk to safety described below) Council will give notice of its intention to make an order in accordance with section 255 of the Act by:

- Giving the person(s) 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.
- Inviting the person notified of the opportunity to give reason/s, within a specified time, why the proposed action should not be taken.

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

### **right of review**

Pursuant to section 256 any person to whom an order is issued has a right to appeal against the order. Any such appeal must be lodged with the South Australian Civil and Administrative Tribunal (SACAT) within fourteen (14) calendar days of service of the order. Council will ensure that reference to this right of review will form part of the order document. This will include details of how an appeal must be lodged with the Council.

### **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 fourteen (14) calendar days from the determination of

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

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.

Where an amount is recoverable by Council, Council may, in accordance with section 257(5) of the Act, by notice in writing to the person fix a period, being not less than twenty eight (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 on the outstanding amount. Council may impose a charge over the land for the unpaid amount, together with interest.

Non-compliance with an order of Council is an offence for which a person may incur a statutory penalty. The maximum penalty of \$2,500 and an expiation fee of \$210 may apply for failure to comply with an order issued under the Act.

### **this policy does not apply to**

Local nuisances and littering offences (other than those found in the *Local Government Act 1999* (SA)) are contained in the *Local Nuisance and Litter Control Act 2016* (SA). Nuisance and littering enforcement 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.

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## **OTHER USEFUL DOCUMENTS**

### **relevant legislation**

- *Local Government Act 1999* (SA)
- *Local Nuisance and Litter Control Act 2016* (SA)

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## **GLOSSARY**

Throughout this document, the below terms have been used and are defined as:

**Authorised Person:** a person appointed by a Council as an authorised person

**Expiation fee:** amount payable as set by the relevant legislation which, once paid to the Council, will expiate an alleged offence

**Order:** a binding directive from an Authorised Person of the Council to another party requiring action of the cessation of an activity of some sort to rectify an alleged breach of an Act or to improve amenity or functionality of an area

**Notice in writing** means written notice given:

- personally
  - by leaving it at the last residential or business address of the person known to the serving authority (including, in the case of a corporation, the registered address of the corporation)
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- by post addressed to the person at the last residential or business address of the person known to the serving authority (including, in the case of a corporation, the registered address of the corporation)
- by leaving it in the letter box to which the document could be sent
- by a means indicated by the person as being an available means of service
- if the document is to be served on a person as the owner of land, the land is unoccupied, and the identity or address of the owner is unknown to the council—by placing the document on a conspicuous part of the land

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### ADMINISTRATIVE

As part of Council's commitment to deliver the City of Adelaide Strategic Plan, services to the community and the provision of transparent information, all policy documents are reviewed as per legislative requirements or when there is no such provision a risk assessment approach is taken to guide the review timeframe.

This Policy document will be reviewed every **3** years unless legislative or operational change occurs beforehand. The next review is required in **2022**.

#### review history:

Trim Reference	Authorising Body	Date/ Decision ID	Description of Edits
ACC2019/42036	Council	19557 13 August 2019	Full review to include changes to <i>Local Government Act 1999</i> order making provisions and the introduction of the <i>Local Nuisance and Litter Control Act 2016</i>
ACC2003/1221	Strategy & Policy Committee	5 August 2002	first version

#### contact:

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**Attachment A**

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.

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>To do or to refrain from doing what?</b>	<b>In what circumstances?</b>	<b>To whom?</b>
<b>1. Unsightly condition of land</b>		
<i>Refer to Local Nuisance and Litter Control Act 2016</i>		
<b>2. Hazards on lands adjoining a public place</b>		
(1) <i>To fence, empty, drain, fill or cover land (including land on which there is a building or other structure).</i>	(1) <i>A hazard exists that is, or is likely to become, a danger to the public.</i>	(1) <i>The owner or occupier of the land.</i>
(2) <i>To remove overgrown vegetation, cut back overhanging branches, or to remove a tree.</i>	(2) <i>The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place.</i>	(2) <i>The owner or occupier of the land.</i>
(3) <i>To remove or modify a flag or banner, a flagpole or sign, or similar object or structure that intrudes into a public place.</i>	(3) <i>The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place.</i>	(3) <i>The owner or occupier of the land.</i>
(4) <i>Where the public place is a road—to take action necessary to protect the road or to remove a hazard to road users.</i>	(4) <i>A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.</i>	(4) <i>The owner or occupier of the land.</i>

**Examples—**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>To do or to refrain from doing what?</b>	<b>In what circumstances?</b>	<b>To whom?</b>
<ul style="list-style-type: none"> <li>· To fill an excavation, or to prevent drainage of water across the road.</li> <li>· To construct a retaining wall or to remove or modify a fence.</li> <li>· To fence land to prevent the escape of animals.</li> <li>· To remove a structure or vegetation near an intersection.</li> </ul>		

**3. Animals that may cause a nuisance or hazard**

*Refer to Local Nuisance and Litter Control Act 2016*

**4. Inappropriate use of vehicle**

<i>To refrain from using a caravan or vehicle as a place of habitation.</i>	<p><i>A person is using a caravan or vehicle as a place of habitation in circumstances that—</i></p> <ul style="list-style-type: none"> <li><i>(a) present a risk to the health or safety of an occupant; or</i></li> <li><i>(b) cause a threat of damage to the environment; or</i></li> <li><i>(c) detract significantly from the amenity of the locality.</i></li> </ul>	<i>The owner or occupier of the land or a person apparently occupying the caravan or vehicle.</i>
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(2) *A reference in the table to an animal or animals includes birds and insects.*

**Attachment B**

Local Government Act 1999

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).*

217—Power to order owner of infrastructure on road to carry out specified maintenance or repair work

- (1) *A Council may, by order in writing to the owner of a structure or equipment (including pipes, wires, cables, fittings and other objects) installed in, on, across, under or over a road, require the owner—*
  - (a) *to carry out specified work by way of maintenance or repair; or*
  - (b) *to move the structure or equipment in order to allow the Council to carry out roadwork.*
- (2) *If the order is not complied with within a reasonable time fixed in the order—*
  - (a) *the Council may itself take the action required by the order and recover the cost of doing so as a debt from the owner; and*
  - (b) *the owner is guilty of an offence and liable to a penalty not exceeding \$5 000.*
- (3) *Subsection (1) and (2) do not apply to the owner of electricity infrastructure, public lighting infrastructure or gas infrastructure if the Commission has determined, on application by the owner, that there are reasonable grounds for not requiring the owner to take the action specified in the order.*
- (4) *In this section—*

**Commission** means the Essential Services Commission established under the Essential Services Commission Act 2002;

**electricity infrastructure** has the same meaning as in the Electricity Act 1996;

**gas infrastructure** has the same meaning as in the Gas Act 1997, but does not include a transmission pipeline within the meaning of the Petroleum Act 2000;

**owner** of a structure or equipment includes a lessee or licensee;

**public lighting infrastructure** has the same meaning as in the Electricity Corporations (Restructuring and Disposal) Act 1999.

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.*

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- (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).*
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*Local Government Act 1999*

262—Power of enforcement

- 1) *If a person (the offender) engages in conduct that is a contravention of this Act or a by-law under this Act, an authorised person may order the offender—*
    - (a) if the conduct is still continuing—to stop the conduct; and*
    - (b) whether or not the conduct is still continuing—to take specified action to remedy the contravention.*
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