



## **COUNCIL POLICY**

### *ORDER MAKING POLICY*

**Approved by:**     *Strategy & Policy Committee*

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**APPENDIX A – CIRCUMSTANCES TO WHICH ORDER MAKING POLICY WILL APPLY**

## **1. INTRODUCTION**

One of the functions of the Council is a responsibility to take measures to protect its area from hazards and to improve the amenity of the City. The 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 and to maintain and improve amenities within the City.

The Local Government Act 1999 requires the Council to take reasonable steps to prepare and adopt policies on the application and use of its powers to make orders to resolve issues of local nuisances and hazards.

The order making powers available to the Council under the Act co-exist with the Council's other regulatory powers and are separate and distinct from the Council's powers to make by-laws for the regulation of those matters specified by the Act.

This Order Making Policy will apply to those circumstances –

- listed at Section 254 of the Act which states that the 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 (see Appendix A); and
- set out at Section 299 of the Act which states that the Council may, on the application of the owner or occupier of land, order an adjoining owner or occupier of land to remove or cut back encroaching vegetation.

## **2. POLICY OBJECTIVE**

The Order Making Policy sets out the principles and steps that the Council will take in the exercise of its order making powers pursuant to Part 2 of Chapter 12 and Section 299 of the Local Government Act 1999.

### **3. POLICY STATEMENTS**

#### **3.1 Principles**

In contemplating the exercise of its order making powers, the Council will consider the following principles which are central to the effective resolution of local nuisances and hazards on private land –

- the degree of hazard or danger to the public;
- the nature and degree of risk to the health/safety of the public;
- the level of detracting from the amenity of the locality;
- the seriousness of the matter;
- issues of frequency, duration and previous incidences of the activity;
- the impact of the activity;
- level of public interest;
- the evidence available; and
- any other steps already taken or proposed by the Council to prevent or minimise the issue.

The Council will, wherever possible, take reasonable steps to resolve issues of local nuisance or hazards by negotiation with the person involved before issuing an order. This approach will be pursued in all cases except those which, in the opinion of the Council, involve a threat to life, an immediate threat to public health or safety or an emergency situation. The Council retains an absolute discretion to issue an order at any stage depending upon the circumstances of each individual matter.

#### **3.2. Responsibilities and Delegations**

This Policy will be adhered to and enforced by the Council or an authorised committee or by authorised officers who have been appointed (in writing) by the Council for the purpose of Sections 254 and 299 of the Act.

### **3.3. Procedures to be followed in Making an Order**

Before making an order, unless the circumstances are urgent, the Council will take the following actions –

- the person to whom it is proposed that the order be directed, will be given a notice in writing which outlines:
  - the proposed action, including the terms of the proposed order and the period within which compliance with the order will be required;
  - the reasons for the proposed action; and
  - an invitation for the person to give reasons, within a specified time, why the proposed action should not be taken.
- if the notice is directed to a person who is not the owner of the relevant land, the Council will take reasonable steps to serve a copy of the notice on the owner;
- the Council may, after considering any representations made within the specified time as detailed on the notice:
  - make an order in accordance with the terms of the original proposal; or
  - make an order with modifications from the terms of the original proposal; or
  - determine not to proceed to make an order.
- the Council may vary any order or revoke any order as it sees fit;
- in the case of a threat to life or immediate threat to public health or safety or in an emergency situation, the Council may, in accordance with Section 255 (12) of the Act, make an order and require compliance without undertaking the above notification process.

### **3.4. Rights of Review**

The order will include a statement which sets out the rights of a person to apply for review of the order under the Act. The statement will include the following prescribed information –

- a statement that it is possible for the person to whom the order is directed to appeal against the order;
- a statement that an application for review is to be made to the District Court within 14 days after service of the order;
- a statement that the operation of the order continues pending the determination of an application for review unless the District Court, or the Council, makes an interim order suspending the operation of the order;
- a statement that the District Court has the power, if satisfied that it is appropriate and just in the circumstances to do so, to vary or set aside the order on an application for review; and
- a warning that if the order is not complied with within the time fixed for compliance or, within 14 days after the completion of any review, then the Council may take the action required by the order (subject to the outcome of any review) and recover the reasonable costs and expenses incurred by the Council in taking this action from the person who has failed to comply with the requirements of the order.

### **3.5. Action for Non-Compliance with an Order**

Non-compliance with an order of the Council will constitute a breach of the Act and the person to whom the order is directed may incur statutory penalties as provided for in the Act. The maximum penalty is \$750.00 and the expiation fee is \$105.00. Where the requirements of an order are not complied with, the Council may –

- take the action required by the order itself and recover the reasonable costs and expenses in doing so as a debt in accordance with Section 257 of the Act from the person who failed to comply with the order; and
- where an amount is recoverable under Section 257 of the Act, the Council may, by notice in writing, fix a period within which the amount is to be paid of no less than 28 days. Failure to pay will result in interest being accrued and if the person is the owner of the land a charge may be imposed on the land for the unpaid amount, including interest.

#### **4. COUNCIL ENDORSEMENT OF THE POLICY**

This Policy was endorsed by the Council on 5 August 2002. Council endorsed the Policy following public consultation on its draft Policy. Written submissions commenting on the draft Policy were invited within 28 days of a notice appearing in the City Messenger on Wednesday 19 June 2002. Submissions received were considered and taken into account in preparing this Policy.

Any future amendment or alteration to this Policy, or substitution of a new Policy, will follow the same public consultation processes unless the alteration has only minor significance and is likely to attract little or no community interest.

#### **5. REVIEW AND EVALUATION**

The effectiveness of this Policy will be reviewed and evaluated by the Council in August 2003.

The Chief Executive Officer will report to the Council on the outcome of the evaluation and make recommendations for amendment, alteration or substitution of a new Policy as necessary.

#### **6. AVAILABILITY OF THE POLICY**

This Policy will be available for inspection at the Council's principal office at 25 Pirie Street, Adelaide South Australia 5000 during ordinary business hours. A copy of the Policy will also be available on the Council's website [[www.adelaidecitycouncil.com](http://www.adelaidecitycouncil.com)].

Copies of the Policy will be provided to interested parties upon request upon payment of any relevant fee fixed by the Council pursuant to Section 188 of the Act.



**Circumstances to which Order Making Policy will apply**

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
<p><b>1. Unsightly condition of land</b></p> <p>To take action considered by the council to be necessary to ameliorate an unsightly condition.</p>	<p>Land, or structure or object on land, is unsightly and detracts significantly from the amenity of the locality in which the land is situated.</p>	<p>The owner or occupier of the land.</p>
<p><b>2. Hazard on lands adjoining a public place</b></p> <p>(1) To fence, empty, drain, fill or cover land (including land on which there is a building or other structure).</p> <p>(2) To remove overgrown vegetation, cut back overhanging branches, or to remove tree.</p> <p>(3) To remove or modify a flag or banner, a flagpole or sign, or similar objects or structure that intrudes into a public place.</p> <p>(4) Where the public place is a road- to take action necessary to protect the road or to remove a hazard to road users.</p>	<p>(1) A hazard exists that is, or is likely to become, a danger to the public.</p> <p>(2) The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place.</p> <p>(3) The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place.</p> <p>(4) A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.</p>	<p>(1) The owner or occupier of the land.</p> <p>(2) The owner or occupier of the land.</p> <p>(3) The owner or occupier of the land</p> <p>(4) The owner or occupier of the land</p>

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
<p><i>Examples:</i></p> <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>		
<p><b>3. Animals that may cause a nuisance or hazard</b></p> <p>To do or to refrain from doing the thing specified in the order in order to abate a nuisance or a hazard to health or safety associated with a live or dead animal or animals, or otherwise to deal with an animal or animals.</p>	<p>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.</p> <p>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.</p> <p><i>Examples:</i></p> <ol style="list-style-type: none"> <li>(1) The slaughtering of animals in a town or urban situation.</li> <li>(2) Keeping an excessive number of insects, birds or other animals.</li> <li>(3) Keeping bees in close proximity of other property.</li> </ol>	<p>The owner or occupier of the land or any person apparently engaged in promoting or conducting an activity.</p>

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
	<p>(4) Keeping animals so as to generate excessive noise, dust or odours, or to attract pests or vermin.</p> <p>(5) Keeping an aggressive animal, or keeping an animal in a situation where it cannot be adequately contained or may cause danger to the public.</p> <p>(6) Failing to deal with a wasp's nest.</p>	
<p><b>4. Inappropriate use of vehicle</b></p> <p>To refrain from using a caravan or vehicle as a place of habitation.</p>	<p>A person is using a caravan or vehicle as a place of habitation in circumstances that –</p> <p>(a) present a risk to the health or safety of an occupant; or</p> <p>(b) cause a threat of damage to the environment; or</p> <p>(c) detract significantly from the amenity of the locality.</p>	<p>The owner or occupier of the land or a person apparently occupying the caravan or vehicle.</p>

1. A reference in the table to an animal or animals includes birds and insects