

COUNCIL POLICY

Reference Number	743200
Responsible Business Unit	Development & Regulation
Responsible Officer	Chief Executive Officer
Legislation	Local Government Act 1999 Local Government (General) Regulations 2013
Relevant Delegations	Local Government Act 1999 Local Government (General) Regulations 2013
Related Policies Management Guidelines Frameworks	Enforcement Policy
Link to Strategic Plan	Objective 2.2 – Care for the Community
Council resolution	145.1
Date Adopted	13 September 2021
Review Date	2024
Previous Revisions	20/2/12 – Item 39.3

PURPOSE

Under Section 259 of the Local Government Act 1999 ('the Act') each council is required to develop an Order Making Policy ('the Policy').

As a result of these statutory obligations, the Rural City of Murray Bridge is committed to utilising the order making powers available to it under the Act to facilitate a safe and healthy environment, improve the amenity of a locality, and to deliver good governance to its area.

OBJECTIVES

To provide clear direction to Council's Authorised Officers to assist with the consistent administration of the Order Making Policy. The Policy provides guidance on:

- The principles Council must consider prior to the making of orders under the policy;
- The process and procedure to be initiated prior to the making of an order under this policy; and
- The action to be commenced upon non-compliance with an order made under this policy.

SCOPE

Section 259 of the Act requires each council to take reasonable steps to prepare and adopt policies concerning the operation of Part 2 of Chapter 12 of the Act, which deals with making orders.

This Policy will apply to the matters set out in the Act under section 216, 218 and 254, which empower the Council to order a person to do or refrain from doing a thing under certain circumstances. This Policy does not apply to other circumstances provided for in the Act and other South Australian legislation that specifically empower the Council to make Orders where appropriate and necessary.

The exercise of the Council's order making power, in accordance with this Policy and relevant statutes, co-exists with the Council's other regulatory powers. For example, the Council has the

power to make and enforce by-laws in certain circumstances and to enforce compliance with the requirements of the *Local Government Act 1999* and a range of other legislation.

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 2016* will be dealt with in accordance with the procedures set out in that Act.

PRINCIPLES

In each situation in which the Council is considering making an Order to require a person to act or to refrain from acting, within its powers to do so, the Council will investigate and consider (to the extent that is relevant and necessary) the following circumstances:

- The seriousness of the offence;
- The degree of wilfulness involved;
- Past history;
- The consequences of non-compliance;
- The likely effectiveness of an Order;
- Deterrence;
- The effect on the community and other people; and
- Consistency of approach to similar breaches/offences.

Additionally, Council staff will also carry out their enforcement related work with due regard to the principles outlined in Councils Enforcement Policy – Proportionality, Consistency and Transparency.

POLICY

The matters to which the Policy applies are set out below. The matters are stated in general terms with particular examples for illustration. These examples are not to an exhaustive list of the circumstances in which the Policy will apply, but rather to assist the community with understanding the purpose and intent of this Policy and how it will be applied.

Hazards on Land Adjoining a Public Place – Section 254

The Council may make an Order directing the owner or occupier of land to take action to deal with hazards on lands adjoining a public place.

Examples of relevant circumstances include:

- A dangerous fence adjoin any road, community land or public place;
- Overhanging branches, overgrown vegetation or structures on land adjoining a public place, that obstruct streets;
- Drainage of water across the road;
- Flag, banner, flagpole or sign intruding into a public place.

Inappropriate use of a Vehicle - Section 254

The Council may make Orders directed to an owner or occupier of land or a person apparently occupying a caravan or vehicle which is used as a place of habitation.

Examples of relevant circumstances include:

- where use of a caravan or vehicle for habitation presents a risk to the health and safety of an occupant;
- use of the vehicle as habitation causes a threat of damage to the environment;
- use of the vehicle as habitation detracts significantly from the amenity of the locality.

Power to order an owner of a private road to carry out specified roadwork – Section 216

The Council may make an Order directing the owner of a private road to carry out specific roadwork to repair or improve the road condition such as for safety reasons.

For example, the owner of the road may be asked to repair pot holes or resurface a road if it has become unsafe for road users.

Power to require owner of adjoining land to carry out specified work - Section 218

The Council may make an Order to the owner of land adjoining a road requiring that they take action to construct, remove or repair a crossing place from the road to the land.

Actions to be taken

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.

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.

Review Rights

Pursuant to section 256 and in accordance with Council's Complaint Management Framework, 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 seek a review against the order by SACAT under Section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*. 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.

Where an Order is issued in accordance with Section 255(12) of the Act, the Order remains in operation regardless of a pending determination of an application for review.

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 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.

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, 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.

Non-compliance with an Order of the Council will constitute a breach of the Local Government Act 1999 and an offence for which a person may incur statutory penalties provided for in the Local Government Act 1999. The maximum penalty and expiation fee for non-compliance with an order is documented in Section 258 of the Local Government Act 1999.

Responsibilities and Delegations

This policy will be enforced by Authorised Persons who have been appointed (in writing) by the Chief Executive Officer under delegation from Council under section 260 of the Act.

Council has delegated powers to its Chief Executive Officer under S216 and 218, 254 and has the authority to sub-delegate to Council staff who have the appropriate skills and experience.

Review and Evaluation

The effectiveness of the policy will be reviewed and evaluated no later than three (3) years after being endorsed by Council, or earlier at the discretion of Council.

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

Availability of the Order Making Policy

This policy will be available for inspection at Council's principal office 2 Seventh Street, Murray Bridge during ordinary business hours and published on the Council's website <https://www.murraybridge.sa.gov.au/>. Copies will be provided to interested parties upon request and payment of a fee.

Council Endorsement of the Policy

This Policy was endorsed by Council on 13 September 2021. Council endorsed the policy following public consultation on its draft policy, as per Council's Public Consultation Policy. Any future amendment or alteration to the policy, or substitution of a new 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.

DEFINITIONS

Nil