
P O L I C Y D O C U M E N T

Policy Name	Order Making Policy
Policy Category	Planning, Development and Regulatory Services
Department/Officer	Planning and Regulatory Services/Graham Pathuis Environment and Infrastructure Services/Bruce Henderson
Date Adopted	25 June 2001
Dates Reviewed	May 2002; July 2003; June 2005; November 2005; 16 August 2010
Review Frequency	As required
Council File Reference	AS.134
Strategic Plan Reference	Legislative requirement
Related Documents	Council by-laws

1. PURPOSE

The purpose of this Policy is to set out the circumstances where Council may:

- Order a person to do or to refrain from doing specific actions as set out in Section 254 - 259 of the Local Government Act 1999 (refer attachment 1).
- Require others to carry out works in accordance with Section 216 & 218 of the Local Government Act in relation to roadworks as well as Section 299 to remove or cut back vegetation.

2. POLICY STATEMENT

The City of Victor Harbor is committed to using the order making powers available to it under the Local Government 1999 in such a way as to facilitate a safe and healthy environment, to improve the amenity of the locality, and generally for the good governance of its area.

3. LEGISLATION AND COMPLIANCE

This Policy was developed in accordance with Section 259 of the Local Government Act 1999 (the Act) and sets out the application of the requirements under Part 2 Chapter 12 (Section 254 to 259) of the Act.

Council is required to undertake public consultation on any significant amendments to its Policy.

4. DEFINITIONS

'Order making' means that Council can regulate activity on private land by making specified orders to target and resolve particular cases of local nuisance.

5. GUIDING PRINCIPLES

When considering making an order within the scope of this Policy the Council will consider the following principles, which are considered central to the effective resolution of local nuisances on private land.

Each case will be considered on its merits. Factors that Council will consider include:

- Severity of the incident or circumstances;
- 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 (eg 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);

6. PROCESS AND PROCEDURE

The Council will take reasonable steps, within available resources to resolve cases of local nuisance by negotiation and agreement before issuing an order, except in the case of an emergency.

Where notice of a proposed order has been given to a person who is not the owner of the relevant land, the Council must take reasonable steps to serve a copy of the notice on the owner of the land.

Except in the case of an emergency described below, before making an order Council 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 (ie 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
- Reason 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.

The Council may, after considering representations made within the time specified -

- a) make an order in accordance with the terms of the original proposal; or
- b) make an order with modifications from the terms of the original proposal; or
- c) determine not to proceed with the order.

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

An order must be served by the Council on the person to whom it is addressed. The Council must take reasonable steps to serve a copy of the order on the owner of the land.

7. REVIEW RIGHTS

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. The Council will ensure that reference to this right of review is included in any order issued.

8. 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 requirement 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 Council is an offence for which a person may incur a statutory penalty provided for in the Act. Section 258 of the Act provides for a maximum penalty of \$2,500 and an expiation fee of \$210 for failure to comply with an order issued under the Act.

Where an order is issued under Section 217, if the order is not complied with within the time specified in the order:

- Council may carry out the action required by the order and recover the cost of doing so as a debt for the owner; and
- The owner is guilty of an offence and liable to a maximum penalty not exceeding \$5,000.

9. **RESPONSIBILITIES AND DELEGATIONS**

This Policy will be enforced by Authorised Persons who have been appointed (in writing) by the Council under Section 260 of the Local Government Act.

Council may also choose to delegate the power to issue orders under Sections 254, 216, 218 and 299 of the Act to Council staff, in which case, Council will ensure appropriate delegations are in place.

10. **RISK MANAGEMENT**

This Policy complies with Council's obligations under Section 259 of the Local Government Act 1999.

11. **EVALUATION AND ACCESSIBILITY**

This Policy will be evaluated annually and reviewed as necessary.

The Policy may be inspected or purchased at the Principal Office of the Council at 1 Bay Road, Victor Harbor. It is also available on Council's website at www.victor.sa.gov.au.

List of Amendments		
Date	Authorised by	Minute Reference

Attachment 1

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 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?
<p>1. Unsightly condition of land</p> <p>To take action considered by the council to be necessary to ameliorate an unsightly condition.</p>	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.	The owner or occupier of the land.
<p>2. Hazards on lands adjoining a public place.</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 a tree.</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>(1) The owner or occupier of the land.</p> <p>(2) The owner or occupier of the land.</p>
(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.
<p>Examples -</p> <ul style="list-style-type: none"> . 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. 		

<p>3. Animals that may cause a nuisance or hazard.</p> <p>To do or 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, 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>Examples -</p> <p>(1) The slaughtering of animals in a town or urban situation.</p> <p>(2) Keeping an excessive number of insects, birds or other animals.</p> <p>(3) Keeping bees in close proximity to other property.</p> <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>The owner or occupier of land or any person apparently engaged in promoting or conducting an activity.</p>
<p>4. Inappropriate use of vehicle.</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>

(2) A reference in the table to an animal or animals includes birds and insects.

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 subsequent (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 and 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 any order is made, any order,

under subsection (1).

Date : _____

: _____