

POLICY

Policy Name	Order Making Policy
Policy Category	Statutory
Department / Officer	Community and Development/Director Community and Development
Date Adopted	25 June 2001
Date/s Reviewed	May 2002; July 2003; June 2005; November 2005; 16 August 2010; 16 December 2013; 26 February 2018; 27 November 2023
Review Frequency	Every three years
Strategic Plan Reference	Aspiration 6 – We are a financially sustainable and well-governed organisation
Attachments	Attachment A - Extract from Local Government Act – Power to make Orders

1. Purpose

The purpose of this Policy is to set out Council's position in regard to its order making powers under the *Local Government Act 1999* and to facilitate a safe and healthy environment to improve the amenity and good governance of the City of Victor Harbor.

2. Scope

This Policy will apply to those circumstances listed in Section 254 of the *Local Government Act 1999* (the Act), which states that Council may order a person to do or to refrain from doing a thing under certain circumstances, as specified in Attachment A.

In accordance with the requirements of the Act, this Policy also applies in respect of orders issued by Council under Section 216 of the Act (power to order the owner of a private road to carry out specified roadworks), Section 217 of the Act (power to order the owner of infrastructure on a road to carry out specified maintenance or repair work), and Section 218 of the Act (power to require the owner of adjoining land to carry out specified work), and Section 262 of the Act (power to order the owner if the conduct is still continuing).

Local nuisances (other than those found in the 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.

3. Policy Statement (Summary)

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.

This Order Making Policy is prepared and adopted pursuant to Section 259 of the Act and sets out the steps Council will take in the making of orders.

4. Legislation and Compliance

To fulfil its functions, Council has a range of statutory powers. These powers enable the Council to exercise its regulatory functions. There is an inter-relationship between order making powers and by-laws. Rather than using by-laws to regulate activity of private land, the Act provides Council with the power to make specified orders to target and resolve cases of local nuisance when they arise.

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

5. Definitions

Amenity of a locality or building means any quality, condition or factor that makes or contributes to making the locality harmonious, pleasant or enjoyable.

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

6. Policy Content

6.1 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:

- The severity of the incident or circumstances;
- The hazard or danger posed to the community or environment;
- The risk to health and safety of the community;
- The detraction from the amenity of the locality;
- Repeated occurrence of the activity or incident (eg duration, previous offences);
- Impact of any previous actions to overcome the problem;
- Is the Breach significant and 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);

- Are there any barriers to Compliance?
 - Language/ Cultural
 - Literacy

6.2 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 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 (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) of the Act 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.

6.3 Review Rights

Pursuant to Section 256 of the Act 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 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.

6.4 Non-compliance with an Order

Where an order is issued under Section 216, 218, 254 and 262 of the Act and is not complied with within the time fixed in the order (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.

7. Risk Management

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

8. Implementation/Delegations

This Policy will be implemented by the Chief Executive Officer and enforced by Authorised Persons who have been appointed (in writing) by the Council (or delegate) under Section 260 of the *Local Government Act 1999*.

The Power to issue orders under Sections 216, 217, 218 and 254 of the *Local Government Act 1999* are delegated to Council employees as listed in Council's Delegations Register.

9. Related Documents

Council by-laws
Enforcement Policy

10. Availability of Policy

This policy is available on Council's website at www.victor.sa.gov.au.

Attachment A

Local Government Act 1999

Division 4 – Power to require others to carry out work

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.
- (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).

Part 2 – Orders

Division 1 – Power to make orders

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	Column2	Column 3
To do or to refrain from doing what?	In what circumstances?	To whom?
1. Unsightly condition of land		
<i>Refer to the Local Nuisance and Litter Control Act 2016</i>		
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.

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| <p>(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></p> | <p>(4) <i>A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.</i></p> | <p>(4) <i>The owner or occupier of the land.</i></p> |
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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.*

3. Animals that may cause a nuisance or hazard

Refer to the Local Nuisance and Litter Control Act 2016

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—

The owner or occupier of the land or a person apparently occupying the caravan or vehicle.

- (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.*

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