Order Making Policy

Strategic Reference	Outcome 5 – Leadership Strategy 3.1 – Council is an organisational leader, reinforcing our position as a leading local government body.
File reference	AR20/11416
Responsibility	Community & Corporate Department
Revision Number	5
Effective date	2011
Last revised date	December 2025
Minutes reference	378/25, 158/20, 045/18, 411/13, 360/11
Next review date	December 2030
Applicable Legislation	Local Government Act 1999
Related Policies	Enforcement Policy Council By-laws
Related Procedures	Nil

1. Purpose

The Order Making Policy (the "Policy") details Council's authority to make orders to protect the community from public hazards and nuisances and lists the penalties applicable for non-compliance with an order, pursuant to of the Local Government Act 1999 (the "Act")".

2. Definitions

"Act" means the Local Government Act 1999.

"Authorised person" means a person appointed by a council as an authorised person under Chapter 12 Part 3 of the Act.

3. Policy Statement

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, to improve the amenity of a locality, and generally for the good governance of its area.

4. 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. Part 2 deals with the making of orders.

This Policy will apply to those circumstances listed in Section 254 which states that Council may order a person to do or refrain from doing a thing under certain circumstances, and/or as set out below.

In accordance with the requirements of the Act, this Policy also applies in respect of orders issued by Council under Section 216 (power to order the owner of private road to carry out specified roadworks), Section 218 (power to require owner of adjoining land to carry out specified work) and Section 254 (vegetation clearance).

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

5. Guiding Principles

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

Council will take reasonable steps to have works undertaken or to resolve cases of local nuisances or hazards by negotiation with the person involved before considering issuing an Order. At the discretion of a delegated officer this will occur except in cases of threat to life and immediate threat to public health or safety or in an emergency.

In each situation in which the Council is considering making an Order, the Council will consider its Enforcement Policy and the following circumstances:

(a) Severity of the incident

(b) Hazard/danger posed to the community

(c) Risk to health/safety of the community

(d) Detraction from the amenity of the locality

(e) Repeated occurrence of the activity/incident (e.g. duration, previous offences)

(f) Impact of any previous action to overcome the problem

(g) Is the breach significant/substantial

(h) Would an informal warning letter be sufficient

(i) Are there any public interest issues

(j) Whether there is sufficient evidence upon which Council may rely to exercise its order making powers

6. Procedures to be followed in making an Order

Except in the case of an emergency described below, 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 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:

(a) Proposed action

(b) Terms of the proposed order (i.e. what it requires the person to do or refrain from doing)

(c) Period within which compliance with the order will be required.

(d) Penalties for non-compliance; and

(e) Reasons for the proposed action; and

(f) 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:

(g) A threat to life; or

(h) An immediate threat to public health or public safety; or

(i) An emergency situation

7. Rights of Review

Pursuant to section 256 any person to whom an order is issued (including an order issued under sections 254, 216, 217, 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.

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 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 Council is an offence for which a person may incur a statutory penalty provided for in the Act.

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

(a) Council may carry out the action required by the order and recover the cost of doing so as a debt for the owner; and

(b) The owner is guilty of an offence and liable to a maximum penalty in accordance with the Act.

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 Act.

10. Availability/Accessibility

This Policy is available for inspection at Council's officers during normal business hours & Council's website and will be emailed to interested parties on request (please lodge request in writing via email to council@coorong.sa.gov.au)

11. Document History

This Policy will be reviewed at least every five (5) years or more frequently if legislation or Council requires.

Version	Adopted	Minute No	Description of change(s)
1	15 November 2011	360/11	New policy
2	19 November 2013	411/13	Cyclical review
3	20 March 2018	045/18	Cyclical review
4	21 July 2020	158/20	Cyclical review
5	16 December 2025	378/25	Superfluous detail (especially where Local Government Act 1999 were replicated) removed Refinement of:

			• Clause 5 (Guiding Principles) • Clause 6 (Procedures to be followed in making an Order) • Clause 7 (Rights of Review)