



Order Making Policy

Strategic Reference	Objective 1; a caring, healthy and resilient community. Strategy 1.7; achieve or implement the statutory and core responsibilities of Council..
File reference	AR20/11416
Responsibility	Community & Corporate Department
Revision Number	4
Effective date	2003
Last revised date	July 2020
Minutes reference	158/20, 045/18, 411/13, 360/11
Next review date	July 2023
Applicable Legislation	Local Government Act Part 2, Chapter 12 s216 & 218
Related Policies	Enforcement Policy Council By-laws
Related Procedures	Nil

1. Purpose of the Policy

The Coorong District Council (“the Council”) is committed to facilitating a safe and healthy environment and to improve the amenity of our locality.

To fulfil its functions the Council has a range of statutory powers including making Policies, Orders and By-Laws. Council has resolved to adopt this Order Making Policy pursuant to Part 2 of Chapter 12 of the *Local Government Act 1999* (“the Act”).

2. Definitions

Order Making powers and processes under the Act are separate and distinct from Council’s powers to make By-Laws for the regulation of matters specified by the Act.

3. Matters to which the policy applies

This Policy applies to the matters set out in the Act at Section 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 which specifically empower the Council to make Orders, when appropriate and as the need arises.

Order Making 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. Part 2 deals with the making of orders.

The order making powers and processes under the Act are separate and distinct from Council's powers to make By-laws for the regulation of matters specified by the Act. The exercise of the Council's order making powers, co-exist with the Council's other regulatory powers such as its powers to make By-laws under the Act.

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. These matters are stated in general terms with particular examples for illustration purposes only. The examples are not intended to be an exhaustive list of the circumstances in which this Policy applies, but rather to provide a guide for the community regarding the purpose and the intent of the Policy and the way in which it will be used.

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.

3.1 Unightly condition of land (section 254)

Council may issue an Order directing the owner or occupier of land to take action considered necessary to ameliorate an unightly condition on the land. This will apply to land or a structure or object on land, which is unightly and detracts significantly from the amenity of the locality in which the land is situated.

3.2 Hazards on lands adjoining a public place (section 254)

Where a hazard exists on land adjoining a public place that is or is likely to become a danger to the public, Council has the power to issue an Order to the owner or occupier of the land, which directs the person/s to fence, empty, drain, fill or cover land (including land on which there is a building or other structure).

Where vegetation, branches or trees on land create, or are likely to create, danger or difficulty to persons using a public place, Council has the power to issue an Order to the owner or occupier of the land which directs them to remove the vegetation, cut back overhanging branches, or remove a tree. Where an object or structure on land creates or is likely to create danger or difficulty to persons using a public place, the Council has the power to issue an Order to the owner or occupier of the land which directs the person/s to remove a flag or banner, a flagpole or sign, or similar object or structure that intrudes into a public place.

Where a situation exists that is causing or is likely to cause damage to a road or a hazard to road users, the Council has the power to issue an Order to the owner or occupier of the land, which directs the person/s to take action necessary to protect the road or remove a hazard to road users.

Order Making Policy

Examples of relevant circumstances:

- i A dangerous fence adjoining any road, community land or public place.
- ii To adequately fence land to prevent the escape of animals
- iii Overhanging branches, overgrown vegetation or structures on land adjoining a public place, which obstructs streets.
- iv Drainage across the road.
- v A flag, banner, flagpole or sign intrudes into a public place.

3.3 Animals that may cause a nuisance or hazard (section 254)

Where 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, the Council has the power to issue an Order to the owner or occupier of the land or any person apparently engaged in promoting or conducting the activity, which directs them 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.

The Council may also make such an Order in circumstances where 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.

Examples of such circumstances include:

- i Slaughtering of animals in a suburban situation.
- ii Keeping of an excessive number of insects, birds or other animals.
- iii Keeping bees in close proximity to other property.
- iv Keeping animals, which generate excessive noise, dust or odour or attract pests or vermin.
- v Keeping an aggressive animal or keeping an animal in a situation where it cannot be adequately contained or may cause danger to the public.
- vi Failing to deal with an European wasp's nest.
- vii Failure or otherwise to lawfully dispose of any dead animal or bird.

3.4 Inappropriate use of vehicle (section 254)

Where a person is using a caravan or vehicle as a place of habitation in circumstances that:

- i Present a risk to the health or safety of an occupant; or
- ii Cause a threat of damage to the environment; or
- iii Detract significantly from the amenity of the locality;

The Council has the power to issue an Order to the owner or occupier of the land or a person apparently occupying the caravan or vehicle, which directs them to refrain from using a caravan or vehicle as a place of habitation.

Order Making Policy

4. Guiding principles

Wherever possible, 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 situation. Council retains the discretion to issue an Order at any stage depending on the circumstances of each individual case.

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

- a. Seriousness of the incident.
- b. Degree of hazard/danger to the community.
- c. Nature and degree of risk to health/safety of the community.
- d. Level of detracting from the amenity of the locality.
- e. The occurrence of the activity i.e. frequency, duration, previous incidents.
- f. The impact of the activity.
- g. Any other action already taken or proposed to prevent/minimize the problem.
- h. Level of public interest.

5. Procedures to be followed in making an Order

Before making an Order, unless the circumstances are urgent, the Council will take the following actions:

- a. Give the person to whom it is proposed that the Order be directed, a notice in writing which outlines:
 - i. The proposed action, including the terms of the proposed Order and the period within which compliance with the Order will be required.
 - ii. The reasons for the proposed action; and
 - iii. An invitation for the person to give reasons, within a specified time why the proposed action should not be taken.
- b. If the notice is directed to a person who is not the owner of the relevant land Council will take reasonable steps to serve a copy of the notices and order on the owner.
- c. Council may, after considering any representations made within the specified time as detailed on the notice:
 - i. Make an Order in accordance with the terms of the original proposal; or
 - ii. Make an Order with modifications from the terms of the original proposal; or
 - iii. Determine not to proceed with an Order.
- d. Council may vary any Order or revoke any Order as it sees fit.

In the case of a threat to life, an immediate threat to public health or safety or in an emergency situation, Council may in accordance with Section 255 (12) of the Act, make an Order and require compliance without undertaking the above notification process.

Order Making Policy

6. Rights of review

The Order will include a statement, which sets out the rights of a person to apply for a review of the Order under the Act. Those rights of review are as follows:

- a. A person to whom the Order is directed may, within 14 days of that person's receipt of the Order, apply to the District Court for a review of the Order.
- b. Subject to 6 (c), the operation of the Order continues pending the determination of an application for review under the Act.
- c. The District Court or the Council may, if it thinks fit, make an interim order suspending the operation of the Order.
- d. The District Court may, if satisfied that it is appropriate and just in the circumstances, vary or set aside an Order on an application for review.

7. Action for 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. Section 258 of the Act provides maximum penalties for failure to comply with an Order issued under the Act.

8. 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.

9. Further information

Any future amendment or alteration (other than minor) to this policy will be subject to public consultation in accordance with Council's Community Engagement Policy.

This policy will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge, from Council's website: www.coorong.sa.gov.au.

Order Making Policy

Coorong Civic Centre

95-101 Railway Terrace
Taillem Bend
Phone: 1300 785 277
Fax: 8572 3822

Meningie Information Hub

49 Princes Highway
Meningie

Tintinara Customer Service Centre

37 Becker Terrace
Tintinara

Copies will be provided to interested parties upon request. Email council@coorong.sa.gov.au

Any grievances in relation to this policy or its application should be forwarded in writing addressed to the Chief Executive Officer of Council.