



*Agriculturally rich~Naturally beautiful*

# COUNCIL POLICY

## Order Making Policy

<b>Policy Number:</b>	PO100		
<b>Strategic Plan Objective</b>	Goal 5 - Responsible Governance 5.3 Meet all legislative requirements and compliance with Council's internal controls		
<b>Policy Owner:</b>	Director Development Services	<b>Container Number:</b>	SC16/1482
<b>Responsible Officer:</b>	Senior Compliance Officer	<b>Minute Reference:</b>	248/2016
<b>Date Adopted:</b>	14/12/2016	<b>Next Review Date:</b>	December 2019

### 1. POLICY OBJECTIVES

The Yorke Peninsula Council ("Council") is committed to using its order making powers to facilitate a safe and healthy environment, to improve the amenity of a locality, and generally for the good governance of its area.

This Order Making Policy is prepared and adopted pursuant to section 259 of the Local Government Act 1999 ("the Act") and sets out the steps Council will take in the making of orders.

### 2. SCOPE

This policy applies:

- To those circumstances listed in section 254 where Council may order a person to do or refrain from doing a thing under certain circumstances, as specified in the table included within that section of the Act (refer Attachment 1).
- In respect of orders issued under sections 216, 217, 218
- To all employees of the Council undertaking work for/on behalf of Council who have delegated authority or who are Authorised Officers exercising powers under sections 216, 217, 218 and Part 2, of Chapter 12 of the Act.

The circumstances to which this policy applies are set out in **Attachment 1**.

### 3. DEFINITIONS

Amenity	Any quality, condition or factor that makes or contributes to making the locality harmonious, pleasant or enjoyable (Development Act 1993)
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### 4. POLICY STATEMENT

Each case for the possible use of the order making powers will be considered on its merits. Factors that Council will consider include:

- risk management
- community health and safety

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- environmental protection
- maintenance of amenity
- extent of impact
- urgency and severity of the issue
- previous offences
- offender's attitude
- number of complaints received.

All persons exercising the powers set out under in this policy will observe the principles of natural justice, fairness, impartiality, confidentiality and transparency at all times.

4.1 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 circumstances described in Clause 4.3 under this policy.

4.2 Before making an order Council will give notice of its intention to make an order in accordance with section 255 of the Act, except in the circumstances described in Clause 4.3 under this policy, 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
- 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.

4.3 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
- an immediate threat to public health or public safety
- an emergency situation.

### 4.4 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, in accordance with clause 5 of this policy, 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.

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Non-compliance with an order of Council is an offence for which a person may incur a statutory penalty provided for in the Act.

### 5. REVIEW RIGHTS

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 under section 256 of the Act. Appeals must be lodged within 14 days of that person's receipt of the order.

### 6. RESPONSIBILITIES AND DELEGATIONS

This policy will be enforced by persons who have appropriate delegated authority and/or who are Authorised Officers who have been appropriately appointed by the Council.

### 7. COMPLAINTS

Complaints about this policy can be made in writing to the Senior Compliance Officer and will be managed in accordance with PO147 Complaints Policy.

### 8. REVIEW

This policy will be reviewed every three years, and will also be reviewed as deemed necessary in consideration of any changes to legislation, relevant standards, codes and guidelines.

If amendments are made to this Policy, Council will by notice in Yorke Peninsula Country Times and on its website, give notice of the places at which copies of the draft are available for inspection (without charge) and purchase (on payment of a fee fixed by the Council) and invite interested persons to make written representations on the updated draft policy within a period specified by the Council (being a period of at least 4 weeks)

### 9. TRAINING

All persons exercising the powers set out under in this policy will be appropriately trained. Training needs will be identified through inductions, performance reviews and audit and training needs analysis processes. Training will also occur and as necessary in response to changes to legislation and relevant standards, codes and guidelines.

### 10. RELATED COUNCIL POLICIES AND DOCUMENTS

PO037 Internal Review of a Council Decision Policy

PO057 Community Engagement Policy

PO147 Complaints Policy

R007 Register of Delegations

### 11. REFERENCES AND LEGISLATION Local Government Act 1999

Yorke Peninsula Council By-Laws

Local Government Association of South Australia Model Order Making Policy

### 12. COUNCIL DELEGATION

Details of Delegation:	Chief Executive Officer
Delegate:	Director Development Services

### 13. VERSION HISTORY

Archived Policy Name	Policy Number	Date Adopted	Last Reviewed
Order Making Policy	PO100	12/11/2004	08/06/2010
Order Making Policy	PO100	08/07/2015	14/12/2016

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## 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 opposite it in Column 2 of the table exist and the person comes within the description opposite it in Column 3 of the table.

<b>Column 1 To do or to refrain from doing what?</b>	<b>Column 2 In what circumstances?</b>	<b>Column 3 To whom?</b>
<b>1. Unsightly condition of land</b>		
To take action considered by the council to be necessary to ameliorate an unsightly condition.	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.
<b>2. Hazards on lands adjoining a public place</b>		
(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.
(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.

#### **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.

<b>Column 1 To do or to refrain from doing what?</b>	<b>Column 2 In what circumstances?</b>	<b>Column 3 To whom?</b>
<p><b>3. Animals that may cause a nuisance or hazard</b></p> <p><i>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.</i></p>	<p><i>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.</i></p> <p><i>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.</i></p>	<p><i>The owner or occupier of land or any person apparently engaged in promoting or conducting an activity.</i></p>

**Examples—**

- (1) *The slaughtering of animals in a town or urban situation.*
- (2) *Keeping an excessive number of insects, birds or other animals.*
- (3) *Keeping bees in close proximity to other property.*
- (4) *Keeping animals so as to generate excessive noise, dust or odours, or to attract pests or vermin.*
- (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.*
- (6) *Failing to deal with a wasp's nest*

<b>Column 1 To do or to refrain from doing what?</b>	<b>Column 2 In what circumstances?</b>	<b>Column 3 To whom?</b>
<b>4. Inappropriate use of vehicle</b>  <i>To refrain from using a caravan or vehicle as a place of habitation.</i>	<i>A person is using a caravan or vehicle as a place of habitation in circumstances that—</i>  <i>(a) present a risk to the health or safety of an occupant; or</i> <i>(b) cause a threat of damage to the environment; or</i> <i>(c) detract significantly from the amenity of the locality.</i>	<i>The owner or occupier of the land or a person apparently occupying the caravan or vehicle.</i>

(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 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 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 the roadwork.

#### **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).