



Order Making Policy

Policy Type	Governance		
Responsible Department	Office of the Chief Executive Officer		
Responsible Officer	Chief Executive Officer		
Related legislation			
Date adopted	18 April 2023	Minute Number	2023.67
Version	3		
Review	August 2018, April 2023		
Next Review date	Ongoing as required. Reviewed within 12 months following the conclusion of a periodic election, in line with legislative changes or by resolution of Council.		

1 Introduction

- 1.1 The District Council of Elliston is committed to using the order making powers available to it under the *Local Government Act 1999* ('the Act') 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.
- 1.2 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.

2 Scope

- 2.1 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.
- 2.2 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, as specified in the table included within that section of the Act (**refer Attachment 1**).
- 2.3 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) and section 218 (power to require owner of adjoining land to carry out specified work).¹

¹ See sections 216(2), 218(2) and 299(2)



Order Making Policy

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

3 Principles

- 3.1 When considering making an order within the scope of this Policy the District Council of Elliston will consider the following principles, which are considered central to the effective resolution of local nuisances on private land:
- 3.1.1 Severity of the incident;
 - 3.1.2 Hazard/danger posed to the community;
 - 3.1.3 Risk to health/safety of the community;
 - 3.1.4 Detraction from the amenity of the locality;
 - 3.1.5 Repeated occurrence of the activity/incident (e.g. duration, previous offences);
 - 3.1.6 Impact of any previous actions to overcome the problem;
 - 3.1.7 Is the breach significant/substantial?;
 - 3.1.8 Would an informal warning letter be sufficient?;
 - 3.1.9 Are there any public interest issues?;
 - 3.1.10 Whether there is sufficient evidence upon which council may rely to exercise its order making powers;
 - 3.1.11 The offender's attitude;
 - 3.1.12 Number of complaints received in respect of the matter (if any).

4 Process and Procedure

- 4.1 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.
- 4.1.1 Personal approach by council officers; and
 - 4.1.2 Informal warning letter prior to commencing the formal order making process.
- 4.2 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:
- 4.2.1 Giving the person to whom an order is intended to be directed a notice in



Order Making Policy

writing stating the:

- 4.2.1.1 proposed action;
 - 4.2.1.2 terms of the proposed order (i.e. what it requires the person to do or refrain from doing);
 - 4.2.1.3 period within which compliance with the order will be required penalties for non-compliance; and
 - 4.2.1.4 reasons for the proposed action; and
- 4.2.2 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:-
- 4.3.1 a threat to life; or
 - 4.3.2 an immediate threat to public health or public safety; or
 - 4.3.3 an emergency situation.

5 Review Rights

- 5.1 Pursuant to section 256 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.
- 5.2 Any such appeal must be lodged within 14 days of that person's receipt of the order.
- 5.3 The council will ensure that reference to this right of review is included in any order issued.

6 Non Compliance with an Order

- 6.1 If an order is not complied with within the time fixed for compliance (or if there is an application for review, within fourteen (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.
- 6.2 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.
- 6.3 Where an amount is recoverable by Council, Council may, by notice in writing to the person, fix a period, being not less than twenty eight (28) days from the date of the notice, within which the amount must be paid and, if the amount is not paid



Order Making Policy

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.

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

6.5 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.

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

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

6.6.2 The owner is guilty of an offence and liable to a maximum penalty not exceeding \$5,000.

7 Responsibilities and Delegations

7.1 This policy will be enforced by Authorised Persons who have been appointed (in writing) by the council under section 260 of the Act.²

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

8 Council Endorsement of the Policy

8.1 This Policy was endorsed by Council on **21 August 2018**. Council endorsed the policy following public consultation on its draft Policy. Written submissions commenting on the draft Policy were invited within twenty one (21) days of a notice appearing in the local newspapers, newsletters and Council's website and Face Book page. Submissions received were considered and taken into account in preparing this policy.

8.2 Any future amendment or alteration to the Policy, or substitution of a new policy, will be subject to the public consultation provisions under section 259(2) of the Act unless the alteration has only minor significance and is likely to attract little or no community interest.

9 Review and Evaluation

9.1 The effectiveness of the policy will be reviewed and evaluated every four (4) years or as required.

² Authorised Persons have powers under section 261 of the Act to enforce breach of orders by way of expiation.



Order Making Policy

- 9.2 The Chief Executive Officer will report to council on the outcome of the evaluation, and make recommendations for amendment, alteration or substitution of a new Policy.
- 9.3 Public consultation is required on any amended policy, unless the council determines that the amendment is of only minor significance.

10 Availability

This Policy will be available for inspection at the Council office, Beach Terrace, Elliston during ordinary business hours and available to be downloaded, free of charge, from Council's website: www.elliston.sa.gov.au

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

Version Control

Version no.	Date adopted by Council	Synergy Record	Amendments Made	Prepared by:
2	21 August 2018			Manager Corporate and Community Services
3	18 April 2023	9.63.2/1 NGR234492	Formatting undertaken and adapted to policy template Any amendments highlighted in red	Executive Assistant

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.

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
1. Unsightly condition of land		
Refer to Local Nuisance and Litter Control Act 2016		
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.
(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.



Order Making Policy

Column 1

To do or to refrain from doing what?

Column 2

In what circumstances?

Column 3

To whom?

3. Animals that may cause a nuisance or hazard

Refer to 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—

- (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.

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

(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).

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).