

Policy Name	Order Making
Policy Number	CD25
Responsible Section	Community & Environmental Health
Responsible Department	Community Development
Date Last Adopted	12 May 2015
Date of Next Review	
Applicable Legislation	Local Government Act 1999
Related Governance Documents	Nil
City Plan Theme	Community – A City that supports community wellbeing Leadership – A City confident in its leaders

PURPOSE/OBJECTIVE

The City of Port Adelaide Enfield 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.

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.

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, as specified in the table included within that section of the Act (refer Appendix 1).

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 299 (vegetation clearance). See Sections 216(2), 218 (2) and 299 (2) of the Act.

PRINCIPLES

When considering making an order within the scope of this policy The City of Port Adelaide Enfield will consider the following principles, which are considered central to the effective resolution of local nuisances on private land:

In each situation in which the Council is considering making an Order to require a person to do something or refrain from doing something, within its powers to do so, the Council will investigate and consider (to the extent that it is relevant and necessary) the following circumstances in accordance with Councils Enforcement Policy:

- Seriousness of the offence; and
- Seriousness of the offence; and
- Degree of willfulness involved; and
- The offender's past history; and
- Consequences of non-compliance; and
- Likely effectiveness of the various enforcement options; and
- Deterrence; and
- Effect on the community and other people; and
- Consistency of approach to similar breaches/offences

POLICY

Except in the case of an emergency described below, Council will take reasonable steps, within available resources, to resolve cases of hazards on land adjoining a public place or inappropriate use of vehicle by negotiation and agreement before issuing an order as follows:

- Personal approach by Council Officers, and
- Informal warning letter prior to commencing the formal order making process.

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 (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.

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, or
- An immediate threat to public health or public safety, or
- An emergency situation.

Review Rights

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. 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.

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 for a maximum penalty of \$2,500 and an expiation fee of \$210 for failure to comply with an order issued under the Act.

Responsibilities & Delegations

This policy will be enforced by Authorised Persons who have been appointed (in writing) by the Council under section 260 of the Act. Authorised Persons have powers under Section 261 of the Act to enforce breach of orders by way of expiation.

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.

DEFINITIONS

Act means the Local Government Act 1999.

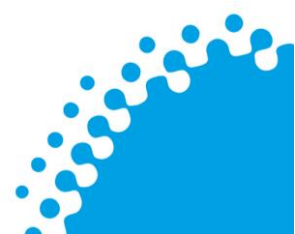
APPENDIX 1 – SECTION 254

To do or to refrain from doing what?	In what circumstances?	To whom?
1. Hazards on land adjoining a public place		
To fence, empty, drain, fill or cover land (including land on which there is a building or other structure).	A hazard exists that is, or is likely to become, a danger to the public.	To the owner or occupier of the land.
To remove overgrown vegetation, cut back overhanging branches, or to remove a tree.	The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place.	To the owner or occupier of the land.
To remove or modify a flag or banner, a flagpole or sign, or similar object or structure that intrudes into a public place.	The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place.	To the owner or occupier of the land.
Where the public place is a road, to take action necessary to protect the road or remove a hazard to road users.	A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.	To the owner or occupier of the land.
Examples: (1) To fill an excavation, or to prevent drainage of water across the road; (2) To construct a retaining wall or to remove or modify a fence; (3) To fence land to prevent the escape of animals; (4) To remove a structure or vegetation near an intersection.		
2. Inappropriate use of a vehicle		
To refrain from using a caravan or vehicle as a place of habitation.	A person using a caravan or vehicle as a place of habitation in circumstances that: (1) Present a risk of health and safety of an occupant; or (2) Cause a threat of damage to the environment; or (3) Detract significantly from the amenity of the locality.	The owner or occupier of the land or a person apparently occupying the caravan or vehicle.
Example: (1) A person living in a caravan on a block not supplied with toilet facilities		



APPENDIX 2 – SECTION 217

To do or to refrain from doing what?	In what circumstances?	To whom?
To carry out specific work by way of maintenance or repair work on equipment (including pipes, wires, cables, fittings and other objects) installed in, on, across, under or over a road, or to move the structure or equipment to allow the Council to carry out roadwork.	Where the infrastructure is found to be in such a condition that it: (1) Presents a risk of health and safety of persons using the road; or (2) Cause a threat of damage to the environment; or (3) Detract significantly from the local amenity; (4) Where the Council is required to carry out roadwork.	The owner or lessee or licensee of the infrastructure.



APPENDIX 3 – SECTION 218

To do or to refrain from doing what?	In what circumstances?	To whom?
To carry out specific work to construct, remove or repair a crossing place from the road to the land.	Where the crossing place is found to be in such a condition that it: (1) Presents a risk of health and safety of persons using the road; or (2) Cause a threat of damage to the environment; or (3) Detract significantly from the local amenity.	The owner of the land.



APPENDIX 4– SECTION 216

To do or to refrain from doing what?	In what circumstances?	To Whom?
To carry out specified roadwork to repair or improve the road.	Where the road is found to be in such a condition that it: (1) Presents a risk of health and safety of persons using the road; or (2) Causes a threat of damage to the environment; or (3) Detracts significantly from the local amenity.	The owner of the land.

