



## Order Making Policy

Strategic Reference	Provide leadership, good governance, and efficient, effective and responsive Council services
File Reference / Record No	18/067/229/3 / NGO13224
Responsibility	Director, Assets and Environment
Version Number	2.0
Effective Date	17 February 2011
Last Revised Date	December 2023
Minute Book Reference	C23254
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Applicable Legislation	Local Government Act 1999 Local Nuisance and Litter Control Act 2016
Related Policies	By-Laws
Related Procedures / Documents	Nil

### 1. Statement

The District Council of Yankalilla 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.

An order is a formal, written directive issued by Council to a person requiring specified actions to be taken or ceased. Council is required to prepare and issue relevant orders in accordance with legislation. 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.

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## 2. Scope

Section 259 of the Act requires Council to take reasonable steps to prepare and adopt policies concerning the operation of Part 2 or 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 Act (refer to **Attached 1**).

In addition to comply with section 254, this Policy will apply to order issued by Council under section 216 (power to order owner of private road to carry out specified roadworks), section 217 (power to order owner of infrastructure on road to carry out specified maintenance or repair work) and section 218 (power to require owner of adjoining land to carry out specified work).

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. 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.

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

- (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

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- (k) The offender's attitude
- (l) 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.

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

#### 4.2. Review Rights

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.

Order Making Policy <i>The electronic version held on Synergy is the controlled version of this document.</i>				Version 2.0 /
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#### 4.3. Non-Compliance with an Order

If an order is not complied with within the time fixed for compliance (or if there 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, fixed 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:

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

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

#### 4.4. Responsibilities and Delegations

This Policy will be enforced by authorised persons who have been appointed (in writing) by Council under section 260 of the Act.

Council may also chose to delegate the power to issue orders under sections 254, 216, 217 and 218 of the Act to Council staff.

Order Making Policy				Version 2.0
The electronic version held on Synergy is the controlled version of this document.				
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## 5. Further Information

This policy will be available for inspection at the Council office listed below during ordinary business hours and provided to interested parties as per Council's Fees and Charges Register. Copies are available to be downloaded, free of charge, from Council's website: [www.yankalilla.sa.gov.au/policies](http://www.yankalilla.sa.gov.au/policies)

District Council of Yankalilla  
1 Charles Street  
Yankalilla 5203

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Email: [council@yankalilla.sa.gov.au](mailto:council@yankalilla.sa.gov.au)

Office hours: Monday to Friday, 9.00am to 5.00pm (except public holidays)

## 6. Grievances

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

## 7. Review Cycle

This document is subject to review in four (4) years from the date of authorisation or more frequently if legislation or Council requires. .

## 8. Document History

Date	Version	Council Resolution No.	Description of changes
September 2012	1.0	NA	Adoption of Policy
February 2015	1.0	NA	Review of Policy
December 2023	2.0	C23254	Review of Policy. Minor formatting amendments made. Removal of reference to s299 of the LG Act (no longer in Act)

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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 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?
<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 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				Version 2.0
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Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
<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> (a) <i>Present a risk to the health or safety of an occupant; or</i> (b) <i>Cause a threat of damage to the environment; or</i> (c) <i>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 a 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 roadwork.*

Order Making Policy <i>The electronic version held on Synergy is the controlled version of this document.</i>				Version 2.0 /
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(2) *If the order is not complied with within a reasonable time fixed in the order—*

*(a) the council may itself take the action required by the order and recover the cost of doing so as a debt from the owner; and*

*(b) the owner is guilty of an offence and liable to a penalty not exceeding \$5 000.*

*(3) Subsection (1) and (2) do not apply to the owner of electricity infrastructure, public lighting infrastructure or gas infrastructure if the Commission has determined, on application by the owner, that there are reasonable grounds for not requiring the owner to take the action specified in the order.*

*(4) In this section—*

**Commission** *means the Essential Services Commission established under the Essential Services Commission Act 2002;*

**electricity infrastructure** *has the same meaning as in the Electricity Act 1996;*

**gas infrastructure** *has the same meaning as in the Gas Act 1997, but does not include a transmission pipeline within the meaning of the Petroleum Act 2000;*

*owner of a structure or equipment includes a lessee or licensee;*

**public lighting infrastructure** *has the same meaning as in the Electricity Corporations*

*(Restructuring and Disposal) Act 1999.*

## **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).*

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