

## ORDER MAKING

|                         |                               |
|-------------------------|-------------------------------|
| Policy Type:            | Council Policy                |
| Responsible Department: | City Services                 |
| Responsible Officer:    | General Manager City Services |
| Related Policies        | Nil                           |
| Date Adopted:           | C717, 23 August 2010          |
| Last Council review     | C887, 26 June 2017            |
| Next review date:       | June 2020                     |
| ECM Doc set I.D.        | 1840016                       |

### 1. POLICY STATEMENT

This policy explains the circumstances in which the powers available within the Local Government Act 1999 (the Act) to make Orders will be used to resolve hazards, to improve the amenity of the locality and for other matters as outlined in the Act in accordance with Council's functions.

### 2. COMMUNITY GOAL

O5.3; Good governance and legislative framework.

### 3. POLICY OBJECTIVES

The objectives of the Policy are to:

- (a) facilitate a safe and healthy environment; and
- (b) maintain and improve the amenity of the City.

To fulfill its functions the Council has a range of statutory powers. These powers enable the Council to make Policies, Orders and By-Laws.

This Order Making Policy is made in relation to the exercise of the Council's powers pursuant to Chapter 12 (Part 2) of the Act.

### 4. PRINCIPLES

Council will take reasonable steps to have works undertaken or to resolve cases of hazards by negotiation with the person involved before considering issuing an Order.

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 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 detractor 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/minimise the problem;
- (h) level of public interest.

The Council is dedicated to facilitating a safe and healthy environment and to maintaining and improving the amenity of the City. Complaints will be dealt with in a timely manner, and adhering to the principles of natural justice.

## **5. POLICY**

This Policy will apply to the matters set out in the Act at Sections 216, 218, and 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 and other legislation which specifically empower the Council to make Orders, when appropriate and as the need arises.

The matters to which this Policy applies are 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 to which this Policy will apply, 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 applied.

The matters to which this Policy applies are as follows:

- (a) Section 216; the power to order owner of private road to carry out specified roadwork.
- (b) Section 218; the power to require owner of adjoining land to carry out specified work.
- (c) Section 254; Power to make orders.

### Hazards on lands adjoining a public place

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, directing the person/s to fence, empty, drain, fill or cover the 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 directing 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 directing 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 directing the person/s to take action necessary to protect the road or remove a hazard to road users.

Examples of relevant circumstances:

- (i) a dangerous fence adjoining any road, community land or public place;
- (ii) overhanging branches, overgrown vegetation or structures on land adjoining a public place, or which obstructs a road;
- (iii) drainage across a road;
- (iv) a flag, banner, flagpole or sign intruding into a public place.

#### Inappropriate use of vehicle

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 directing them to refrain from using a caravan or vehicle as a place of habitation.

## **6. PROCEDURES**

### **6.1 Procedures to be followed in making an Order**

Before making an Order (under the various sections of the Local Government Act 1999), 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; and
  - (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.
- (e) In the case of a threat to life and 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.

## **6.2 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 after service of the Order, appeal against the Order to the District Court.;
- (b) Subject to (c) below, 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.

## **6.3 Action for non-compliance with an Order**

Non-compliance with an Order of the Council will constitute a breach of the Act and the person to whom the Order is directed may incur statutory penalties as provided for in the Act. The maximum penalty and expiation fee will apply (Refer to Council's Fees & Charges Register for current penalty and expiation fees). Where the requirements of an Order are not complied with, the Council may:

- (a) Take the action required by the Order itself and recover the reasonable costs and expenses in doing so as a debt in accordance with Section 257 of the Act from the person who failed to comply with the Order.
- (b) Where an amount is recoverable under Section 257 of the Act, the Council may, by notice in writing, fix a period within which the amount is to be paid of no less than 28 days. Failure to pay will result in interest being accrued and if the person is the owner of the land a charge may be imposed on the land for the unpaid amount, together with interest.

## 7. DEFINITIONS

“The Act” means the Local Government Act 1999.

“The Council” means the Corporation of the City of Unley.

## 8. LEGISLATION / REFERENCES

Local Government Act 1999, Chapter 12, Part 2.

The Policy is mandatory as required under Section 259 of the Act.

Any future amendment or alteration to this Policy or a substitution of a new Policy will be subject to the public consultation provisions of the City of Unley and Section 259 of the Act, unless the alteration has only minor significance.

## 9. ROLES / RESPONSIBILITIES

Full information about the sub-delegated powers and duties is contained in the Council Delegations Register.

## 10. AVAILABILITY

The policy is available for public inspection during normal office hours from;

Civic Centre  
181 Unley Road  
Unley SA 5061

A copy may be purchased for a fee as determined annually by Council.

It is also available for viewing, download and printing free of charge from the Council’s website, [www.unley.sa.gov.au](http://www.unley.sa.gov.au)

## 11. DOCUMENT HISTORY

| Date:      | Council/Committee/Internal | Comment:   |
|------------|----------------------------|--|
|            |                            | Previous policy numbers:<br>4.4.04, 36.<br>COU119.<br>COU55.                       |
| 16/08/2010 | CSP 348, 2010              |  |
| 23/08/2010 | Council 717, 2010          |  |
| 08/10/2012 | CSP 139, 2012              |  |
| 22/10/2012 | Council 564, 2012          |  |
| 28/04/2014 | Council 1116, 2014         |  |
| 26/06/2017 | Council 887, 2017          | Amendments due to<br>commencement of Local Nuisance<br>and Litter Control Act 2016 |