

S0013: ORDER - MAKING POLICY

Policy Type:	Council Policy
Responsible Department:	City Services
Responsible Officer:	General Manager City Services
Related Policies and Procedures	<ul style="list-style-type: none"> • Council's By-Laws
Community Plan Link	<i>Civic Leadership</i> 4.1 We have strong leadership and governance.
Date Adopted	23 August 2010: C717/10
Last review date	26 August 2019: C0132/19
Next review date	August 2022
Reference/Version Number	S0013: Version 5
ECM Doc set I.D.	1840016

1. PREAMBLE

- 1.1. Council is responsible for providing the governance and management of the City of Unley. In particular, it is the function of Council to provide for the welfare, well-being and interests of the members of its community and to take measures to protect the area from hazards and to improve amenity.
- 1.2. To fulfil its functions, Council has a range of statutory powers. These powers enable the Council to exercise its regulatory functions by making Policies, Orders and By-laws. Council maintains an Order Making Policy in relation to the exercise of its powers pursuant to Part 2 of Chapter 12 of the *Local Government Act 1999*, to promote the health, safety and well-being of the community. The Policy sets out the matters about which Orders will be made and the relevant principles, procedures and non-compliance actions that will be applied.

2. SCOPE

- 2.1. This Policy is mandatory under section 259 of the *Local Government Act 1999*.
- 2.2. The order making powers and processes under the Act are separate and distinct from Council's powers to make By-laws for the regulation of matters specified by the Act. The exercise of the Council's order making powers, co-exist with the Council's other regulatory powers such as its powers to make By-laws under the Act.
- 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;

- 2.3.1. Section 218: Power to require owner of adjoining land to carry out specified work; and
- 2.3.2. Section 254: Power to make orders in the circumstances as described in this section.

3. POLICY OBJECTIVES

- 3.1. The objectives of the Policy are to:
 - (a) facilitate a safe and healthy environment; and
 - (b) maintain and improve the amenity of the City.
- 3.2. To fulfil its functions the Council has a range of statutory powers. These powers enable the Council to make Policies, Orders and By-Laws.

Principles

- 3.3. 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.
- 3.4. Negotiation 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.
- 3.5. 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 detraction 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; and
 - (h) level of public interest.
- 3.6. 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, adhering to the principles of procedural fairness (or natural justice).

4. DEFINITIONS

- 4.1. The **Act** means the *Local Government Act 1999*.
- 4.2. **Council** means the Corporation of the City of Unley.

5. ROLES AND RESPONSIBILITIES

- 5.1. This policy will be administered on behalf of Council by the:
 - General Manager City Services
 - Manager Development & Regulatory Services
 - Team Leader Regulatory Services.

6. POLICY STATEMENT

- 6.1. 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.
- 6.2. The matters to which this Policy applies are set out below. These matters are stated in general terms with particular examples for illustrative purposes only and are not intended to be an exhaustive list of the circumstances to which this Policy applies. These examples provide a guide for the community regarding the purpose and the intent of the Policy and the way in which it will be applied.
- 6.3. The matters to which this Policy applies are as follows:
 - 6.3.1. Section 216: the power to order an owner of a private road to carry out specified roadwork.
 - 6.3.2. Section 218: the power to require an owner of adjoining land to carry out specified work.
 - 6.3.3. Section 254: Power to make orders in the circumstances as described.
- 6.4. **Hazards on lands adjoining a public place:**
 - 6.4.1. 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).
 - 6.4.2. 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.
 - 6.4.3. 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.
 - 6.4.4. 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.
 - 6.4.5. Examples of relevant circumstances:
 - i. To fill an excavation, or to prevent drainage of water across the road.
 - ii. overhanging branches, overgrown vegetation or structures on land adjoining public places, or which obstructs a road.
 - iii. To construct a retaining wall or to remove or modify a fence.
 - iv. To fence land to prevent the escape of animals.
 - v. To remove a structure or vegetation near an intersection.

6.5. Inappropriate use of vehicle:

6.5.1. 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.

7. PROCEDURES

Procedures to be followed in making an Order

7.1. 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:
 - iv. the proposed action, including the terms of the proposed Order and the period within which compliance with the Order will be required; and
 - v. the reasons for the proposed action; and
 - vi. 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) A council may, at the request, or with the agreement, of the person to whom an order is directed, vary an order or may, on its own initiative, revoke an order if satisfied that it is appropriate to do so.
- (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.

Rights of Review

- (a) An order must include a statement setting out the rights of a person to seek a review of the order under this Act. A statement is sufficient if it includes the information specified by the regulations. A person to whom an order is directed may, within 14 days after service of the order, seek a review of the

order by SACAT under section 34 of the South Australian Civil and Administrative Tribunal Act 2013;

Action for non-compliance with an Order

- 7.2. 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.
- 7.3. The maximum penalty and expiation fee will apply (Refer to Council's *Fees & Charges Register* for current penalty and expiation fees).
- 7.4. 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.

8. POLICY DELEGATIONS

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

9. LEGISLATION

- *Local Government Act 1999*, Chapter 12, Part 2.
- 9.1. 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.

10. AVAILABILITY OF POLICY

- 10.1. The Policy is available for public inspection during normal office hours at:
The 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.

11. DOCUMENT HISTORY

Date	Ref/Version No.	Comment
23 August 2010	C717/10: V1	
22 October 2012	C564/12: V2	
28 April 2014	C1116/14: V3	
26 June 2017	C887/17: V4	Amendments due to commencement of <i>Local Nuisance and Litter Control Act 2016</i>
23 August 2019	C0132/19 : V5	