

NARACOORTE LUCINDALE COUNCIL

COUNCIL POLICY ORDER MAKING

88 (formerly C5.16)
Version 3.2

RESPONSIBLE OFFICER:	Chief Executive Officer
RELEVANT DELEGATIONS:	Directors, Managers , Authorised Officers
LEGISLATION AND REFERENCES:	Local Government Act 1999, Part 2 – Orders and sections 216, 217, 218, 262 and 299
ASSOCIATED PROCEDURES:	
COUNCIL STRATEGIC PLAN:	Liveable neighbourhoods - a range of well-planned neighbourhoods and public space, designed with a strong sense of identity and place

PURPOSE OF POLICY

The purpose of this policy is to state Council's position in regards to its order making powers under the Local Government Act 1999. This policy will assist Council to facilitate a safe and healthy environment, and to improve the amenity of the locality, by protecting the district from public hazards and nuisances.

The exercise of Council's order making power, in accordance with this policy co-exists with Council's other regulatory powers such as by-laws, compliance with the Local Government Act 1999 and a range of other Acts.

SCOPE

Section 259 of the *Local Government Act 1999 (the Act)* requires Council to adopt policies concerning the operation of Part 2, Orders of Chapter 12, Regulatory Functions which deal with the making of orders under section 254 **with respect to hazards on lands adjoining a public place and inappropriate use of a vehicle**. The policy also applies to sections:

- 216—Power to order owner of private road to carry out specified roadwork
- 218—Power to require owner of adjoining land to carry out specified work
- ~~299—Vegetation clearance~~

While not required by legislation, this policy will apply where appropriate, to orders issued under sections:

- 217 - Power to order owner of infrastructure on road to carry out specified maintenance or repair work
- 262 - Power of enforcement

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.

Section 254

Section 254 states that Council may order a person to do or refrain from doing a thing under certain circumstances which are stated below in general terms with examples for illustration. These examples are not intended to be an exhaustive list of the circumstances in which orders may be issued under section 254. They are included to assist the community to understand the purpose and intent of this policy and the way in which it will be applied.

1. Unsightly Condition of Land

An order may be made directing the owner or occupier of land, or a structure or object on land, to rectify an unsightly condition of land that detracts significantly from the amenity of the locality.

2. Hazards on Land Adjoining a Public Place

An order may be made against the owner or occupier of land to take action to deal with hazards on lands adjoining a public place.

Examples of such circumstances include where:

- a hazard exists that is or is likely to become a danger to the public to fence, empty, drain, fill or cover land
- vegetation, branches or trees create, or are likely to create, danger or difficulty to persons using a public place to remove overgrown vegetation, cut back overhanging branches or to remove a tree
- a flag, banner, flagpole or sign or similar object or structure that intrudes into a public place creates or is likely to create, danger or difficulty to people using a public place
- a situation exists on a road that is causing, or is likely to cause, damage to the road or a hazard to road users to protect the road or to remove a hazard to road users.

3. Animals that May Cause a Nuisance or Hazard

An order may be made against an owner or occupier of land or any person engaged in promoting or conducting an activity that creates a nuisance or hazard to health or safety associated with a live or dead animal or animals, or otherwise to deal with animal/s.

Examples of such circumstances include:

- Slaughtering of animals in a town or urban situation
- Keeping of excessive number of insects, birds or other animals
- Keeping of animals which generate excessive noise, dust or odour or attract pests or vermin
- Keeping an aggressive animal or keeping an animal in a situation where it cannot be adequately contained or may cause danger to the public
- Failing to deal with a wasps nest

- ~~Failure to bury or otherwise lawfully dispose of any dead animal or bird.~~

4. Inappropriate Use of a Vehicle

An order may be made against an owner or occupier of land or a person apparently occupying a caravan or vehicle which is used as a place of habitation.

Examples of such circumstances include:

- Where use of a caravan or vehicle for habitation presents:
 - a risk to the health and safety of an occupant
 - causes a threat of damage to the environment or
 - detracts significantly from the amenity of the locality.

Sections 216, 218, 217 and 262

An ~~Listed below are~~ examples of an orders: ~~under section 216 (power to order the owner of a private road to carry out specified roadworks) is:~~

- an order issued to the owner of a private road to repair pot holes in the private road (~~section 216 - power to order the owner of a private road to carry out specified roadworks) is:~~

Section 218

An example of an order under section 218 (~~power to require owner of adjoining land to carry out specified work) is:~~

- an order issued to the owner of land adjoining a road to construct, remove or repair a crossing place from the road to the land (~~section 218 - power to require owner of adjoining land to carry out specified work)~~

Section 299

~~Under Section 299, Vegetation clearance, Council has the power to order an owner or occupier of land to take specific action relating to vegetation after the owner or occupier of the adjoining land has made application to Council.~~

~~Council will only use its order making powers under section 299 in extreme circumstances or as outlined in Council's Tree Management Policy.~~

~~These circumstances will require the following to have occurred:~~

- The relevant owners/occupiers have seriously attempted to resolve the matter amongst themselves and documented evidence has been provided to Council
- The relevant owners/occupiers have attempted to use a third party mediator (such as those provided by Community Mediation services) and that process has failed to resolve the matter
- The vegetation involved poses a substantial threat to private property and the personal safety of people
- It is feasible for specific remedial action to be taken
- A written application to Council must be provided identifying how the situation meets the above criteria along with all relevant details of the matter including the name and address of the owner or occupier against whom they wish the Council to serve notice upon and evidence that mediation has been unsuccessful.
- Any relevant fees have been paid
- Any other condition the CEO believes appropriate.

Section 217

While not required by legislation, this policy will apply where appropriate, to orders issued under section 217 (power to order owner of infrastructure on road to carry out specified maintenance or repair work) of the Act.

An example of such a circumstance is, but not limited to:

- an order issued to the owner of pipes under a road to repair the pipes (section 217 - power to order owner of infrastructure on road to carry out specified maintenance or repair work)

Section 262

While not required by legislation, this policy will apply where appropriate, to orders issued under section 262 (power of enforcement) of the Act.

An examples of such a circumstance is, but not limited to:

- an order issued against a person who is engaging in conduct that is a contravention of the Act to stop the conduct (section 262 - power of enforcement)

GENERAL PRINCIPLES

In each situation in which Council (including delegated officers) is considering making an order within the scope of this policy, Council will investigate and consider (to the extent that it is relevant and necessary) the following circumstances:

- Severity of the incident or circumstance
- Hazard or danger posed to the community

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- Risk to health and safety of the community
 - Detraction from the amenity of the locality
 - The number of occurrences of the activity or incident (eg: duration, previous offences)
 - Impact of any previous actions to overcome the problem
 - The significance of the breach, any other public interest or well-being considerations
 - The availability of a more appropriate response by Council such as a warning letter
 - Is there sufficient evidence that Council can rely on to support the use of its order making powers?
 - Number of complaints received in respect of the matter (if any).

Before making an order, unless the circumstances are urgent, Council (including delegated officers) will:

- Give the person to whom an order is intended to be directed a notice in writing stating the:
 - proposed action
 - terms of the proposed order (ie 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
 - invite the person notified to give reason/s, within a specified time, as to why the proposed action should not be taken
 - follow other relevant procedures as listed in section 255
- 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: Within available resources, take reasonable steps to resolve cases of local nuisance by negotiating with the person involved before issuing an order, except in cases where the circumstance or activity constitutes, or is likely to constitute:
 - a threat to life
 - an immediate threat to public health or safety
 - an emergency situation

Review Rights (section 256) and Action on Non-Compliance (sections 257 and 258)

Any person to whom an order is issued has a right to appeal against the order. An appeal must be lodged within 14 days of receiving an order. Reference to this right of review will be included in any order issued.

As permitted in section 257 where an order issued under 216, 217, 218 or 254 or 299 is not complied with, within the time fixed, in the order (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.

Non-compliance with an order of Council, issued under sections 254, 216 and 218 and 299 is an offence and may result in a penalty and expiation fee as set out in Section 258.

Where an order issued under section 217 is not complied with, within the time specified, Council may carry out the action required by the order and recover the cost of doing so as a debt from the owner. The owner will be guilty of an offence and liable to a maximum penalty as set out in section 217(2).

Where an order issued under section 262 is not complied with, Council may take action reasonably required to have the order carried out and the person, to whom the order was issued, will be guilty of an offence and liable to a maximum penalty as set out in section 262(2).

OTHER RELEVANT POLICIES / PROCEDURES

Other Council Policies which may be relevant and require consideration when applying this policy include:

- *Delegation Policy*
- *Tree Management Policy*
- *Footpaths Policy*

POLICY ENQUIRIES

All queries about this policy should be directed to the Chief Executive Officer or relevant Director.

POLICY REVIEW

This Policy will be reviewed at least every four years.

AVAILABILITY OF POLICY

The public may inspect a copy of this policy, without charge, at the Council's Naracoorte and Lucindale offices during office hours, and may obtain a copy for a fee fixed by Council.

The Policy is also available on Council's website www.naracoortelucindale.sa.gov.au

This Policy is available for inspection at Council's Naracoorte and Lucindale offices during ordinary business hours, or via the Council website www.naracoortelucindale.sa.gov.au at no cost.

Copies or extracts of this Policy may be purchased for the fee set out in Council's *Fees and Charges Guide*.

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ADOPTION AND AMENDMENT HISTORY

The community will be invited to comment on future amendments or alterations to this Policy, as required by Section 259 (2) of the Act unless Council determines that the alterations are of minor significance.

Date	Authorised by	Minute Reference
May 2022		Next review
May 2018	Council	
May 2014	Council	406/14
15 December 2009	Council	258/10
25 November 2008	Council	197/09
27 November 2007	Council	188/08
28 November 2006	Council	228/07
28 June 2005	Council	370/05
24 October 2000	Council	Policy adopted