



Order Making Policy

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Order Making Policy

1. Preamble

- 1.1. Kangaroo Island Council is responsible for providing the governance and management of its area at a local level. In particular it is the function of the Council to provide for the welfare, well-being and interests of the members of its community and to take measure 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 the *Local Government Act 1999*, to promote the health, safety and well-being of the community. This Policy sets the matters about which Orders will be made and the relevant principles, procedures and non-compliance actions that will be applied.

2. Purpose

- 2.1. The Order Making Policy details Council's authority to make orders to protect the community from public hazards and nuisances and lists the penalties applicable for non-compliance with an order, pursuant to the *Local Government Act 1999* (the "Act").

3. Scope

- 3.1. This Policy will apply to those circumstances listed in Section 254 of Act which states 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 Attachment 1).
- 3.2. In accordance with the requirements of the "Act", the 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), and Section 218 (power to require owner of adjoining land to carry out specified work).
- 3.3. Local nuisances (other than those found in the "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.

4. Definitions

- 4.1. **The "Act"** means the Local Government Act 1999.
- 4.2. **Authorised person** means a person appointed by a council as an authorised person under Chapter 12 Part 3 of the "Act".

5. Policy Statement

5.1. Guiding Principles

- 5.1.1. When considering making an order within the scope of the policy Council will consider the following principles, which are considered central to the effective resolution of local nuisances on private land:

- a. Severity or seriousness of the incident or circumstance;
- b. Extent of hazard or danger posed to the community;
- c. The risk to health and 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. The impact of any previous actions to deal with the activity of incident;
- g. The significance of the breach, any other public interest or well-being considerations;
- h. The availability of a more appropriate responses by the Council;
- i. Implications of not taking any action;

5.1.2. To this end, Council will apply the principles of social justice, ecological sustainability, an accountable and transparent process and a high level of customer service when undertaking to resolve an Order making issue in relation to this Policy.

5.2. Matters to which the Policy Applies

5.2.1. The matters to which this Policy applies are set out below and in addition within Attachment 1, including those listed within "Scope". The matters are stated in general terms with particular examples for illustration. These examples are not intended to be an exhaustive list of the circumstances in which the Policy will apply. They are included to assist the community in understanding the purpose and intent of this Policy and the way in which it will be applied.

5.2.2. Inappropriate use of a vehicle

- a. The council may make Orders directed to an owner or occupier of land or a person apparently occupying a caravan or vehicle which is used as a place of habitation.
- b. Examples of relevant circumstances include;
 - i. Where use of a caravan or vehicle for habitation presents a risk to health and safety of an occupant or third party;
 - ii. Use of the vehicle as habitation causes a threat of damage to the environment;
 - iii. Use of the vehicle as habitation detracts significantly from the amenity of the locality.

5.3. Procedures to be followed:

5.3.1. The procedure to be followed in issuing of an Order must be in accordance with the requirements of Section 255 of the "Act". Before making an Order, unless the circumstances are urgent, the Council will take the following actions:

- a. Give the person/s to whom an Order is intended to be directed a notice in writing stating the:
 - i. Identified infringement;
 - ii. Proposed action (the Order);
 - iii. Reasons for the proposed Order;
 - iv. Period within which compliance with the Order would be required;
 - v. Penalties for non-compliance, and;
 - vi. Invite the person/s notified to give reasons, within a specified time, as to why the proposed action should not be taken.

5.3.2. The Council will take reasonable steps, within available resources, to resolve cases of local nuisance by negotiation and agreement before issuing an Order, except in cases of threat to life, an immediate threat to public health or safety or an emergency situation.

5.3.3. Where notice of a proposed Order has been given to a person who is not the owner of the relevant land, the Council must take reasonable steps to serve a copy of the notice on the owner of the land.

5.3.4. After considering the representations made by the person to whom notice of the Order is directed, the Council may:

- a. Make an Order in terms of the original proposal, or
- b. A modification of the original proposal, or
- c. Determine not to proceed with making an Order.

5.3.5. After issuing an Order the Council may:

- a. Include two or more Order in the same instrument;
- b. Direct two or more persons to do something specified in the Order jointly.

5.3.6. An Order that is issued must:

- a. Specify a reasonable period within which the Order must be complied with, and;
- b. State the reasons for the Order.

5.3.7. An Order must be served by the Council on the person/s to whom it is addressed. If the person/s to whom the notice and the Order are addressed is

not the owner of the land, the Council must take reasonable steps to serve a copy of the notice and Order on the owner of the land.

5.3.8. If the land is owned or occupied by more than one person:

- a. An Order in respect of the land is not invalid merely because it is not directed to all of those owners and/or occupiers; and
- b. An owner and/or occupier who complies with an Order may recover a fair contribution from the other owners and/or occupiers;

5.3.9. The Council may at the request, or with the agreement, of the person/s to whom the Order is directed, vary any Order, or, may of its own initiative, revoke an Order if satisfied it is appropriate to do so.

5.3.10. If the Council in a particular case considers an activity constitutes, or is likely to constitute a threat to life or public health or safety, or an emergency situation exists, it may:

- a. Proceed to make an Order without giving notice, and;
- b. Require immediate compliance with the Order.

5.4. Rights of Review – Section 256 of the “Act”

5.4.1. Before enforcing the operation of an Order, unless circumstances are urgent, the Council will take into consideration the following:

- a. That the person/s to whom an Order is directed may apply to the South Australian Civil and Administrative Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*; for a review of the Order within fourteen (14) days after service of the Order;
- b. That the operation of an Order continues pending the determination of an application for review;
- c. That the South Australian Civil and Administrative Tribunal may, if it thinks fit, make an interim decision suspending the operation of an Order;
- d. That upon review, the South Australian Civil and Administrative Tribunal may, if satisfied that it is appropriate and just in the circumstances, vary or set aside the Order.

5.5. Action on Non-Compliance with an Order – Section 257 of the “Act”

5.5.1. The Council, or an employee of Council, or another person delegated by Council, may, if the requirements of the Order are not complied with within the time specified in the Order, carry out the requirements of the Order.

5.5.2. The reasonable costs and expenses of the Council in carrying out the requirements of an Order may be recovered by the Council from the person/s who failed to comply with the Order as a debt.

5.5.3. Where an amount is recoverable from a person/s by the Council, the Council may give that person/s notice in writing to pay the amount within no less than 28 days from the date of the notice.

5.5.4. If the person/s fails to pay the amount that person/s is liable to pay interest, and, if the person/s is the owner of the land to which the Order relates, Council may impose a charge on the land for the unpaid amount together with the interest.

5.6. Penalties – Section 258 of the “Act”

5.6.1. Non-compliance with an Order of the Council will constitute a breach of Section 258 of the *Local Government Act 1999*, and a person may incur statutory penalties as provided in Section 258 of the Act. All Orders of the Council will include the specific statutory penalty relevant to a breach of that particular Order, and will advise of any applicable appeal rights.

6. Availability of the Policy

6.1. This Policy will be available for inspection via the Council's website:
www.kangarooisland.sa.gov.au

6.2. Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.

SIGNED:



Chief Executive Officer

Date: 12 April 2022

History:

Date Reviewed:	Version:	Reason for Amendment:
20 September 2010	Version 1	Adopted by Council. Minute Book Reference 3.6.1
28 September 2011	Version 2	Review and amendment to format and layout
04 September 2014	Version 3	Review and amendment to include new Council format.
10 November 2015	Version 4	Full review and inclusion of new Council Logo.
13 June 2017	Version 5	Periodic Review Ref# C184:2017
11 June 2019	Version 6	Periodic Review Minute Ref# C212:2019
12 April 2022	Version 7	Template update and full policy review

7. 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 opposite it in Column 2 of the table exist and the person comes within the description opposite it in Column 3 of the table.*

Column 1	Column 2	Column 3
<i>To do or to refrain from doing what?</i>	<i>In what circumstances?</i>	<i>To whom?</i>
1. Unsightly condition of land		
<i>Refer to Local Nuisance and Litter Control Act 2016</i>		
2. Hazards on lands adjoining a public place		
(1) <i>To fence, empty, drain, fill or cover land (including land on which there is a building or other structure).</i>	(1) <i>A hazard exists that is, or is likely to become, a danger to the public.</i>	(1) <i>The owner or occupier of the land.</i>
(2) <i>To remove overgrown vegetation, cut back overhanging branches, or to remove a tree.</i>	(2) <i>The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place.</i>	(2) <i>The owner or occupier of the land.</i>
(3) <i>To remove or modify a flag or banner, a flagpole or sign, or similar object or structure that intrudes into a public place.</i>	(3) <i>The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place.</i>	(3) <i>The owner or occupier of the land.</i>
(4) <i>Where the public place is a road—to take action necessary to protect the road or to remove a hazard to road users.</i>	(4) <i>A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.</i>	(4) <i>The owner or occupier of the land.</i>

Column 1	Column 2	Column 3
<i>To do or to refrain from doing what?</i>	<i>In what circumstances?</i>	<i>To whom?</i>

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.*

3. Animals that may cause a nuisance or hazard

Refer to Local Nuisance and Litter Control Act 2016

4. Inappropriate use of vehicle

<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>	<i>The owner or occupier of the land or a person apparently occupying the caravan or vehicle.</i>
	<i>(a) present a risk to the health or safety of an occupant; or</i>	
	<i>(b) cause a threat of damage to the environment; or</i>	
	<i>(c) detract significantly from the amenity of the locality.</i>	

- (2) *A reference in the table to an animal or animals includes birds and insects.*

Division 4—Power to require others to carry out work

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).*

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).*