

Order making policy

1. Purpose

The purpose of this policy is to outline Council's position regarding the exercise of its order making powers under the Local Government Act 1999. This policy supports Council in maintaining a safe, healthy environment, and well-managed environment, enhancing the amenity of the local area, and protecting the community from public hazards and nuisances.

The exercise of Council's order-making powers under this policy and the relevant legislation, operates alongside Council's other regulatory functions. The powers complement, rather than replace, Council's authority to make and enforce By-laws, ensure compliance with the Local Government Act 1999 (the Act), and administer and enforce the requirements of other applicable legislation.

2. Policy

This policy will apply to the circumstances listed in the Act as follows:

2.1. Section 254

Section 254 allows Council to order a person to do, or stop doing certain things in specific circumstances. The situations listed below are intended as a guide only and are not a complete list of when an order may be issued under section 254. They are included to help the community to understand the purpose of this policy and how it may be applied.

The matters to which this policy applies are as follows:

2.1.1. Hazards on land adjoining a public place

An order may be issued to the owner or occupier of land to address hazards on land next to a public place.

Examples of such circumstances include:

- a) A dangerous fence next to a road, community land or public place
- b) Overhanging branches, overgrown vegetation or structures that obstruct a street or public area
- c) Water draining across a road from adjoining land
- d) A flag, banner, flagpole or sign extending into a public place.

2.1.2. Inappropriate use of a vehicle

An order may be issued to the owner or occupier of land or to a person who is apparently living in a caravan or vehicle used as a place of residence.

Examples include where:

- a) The use of a caravan or vehicle for living purposes in circumstances that pose a risk to the health and safety of an occupant
- b) Living in the caravan or vehicle may cause environmental harm
- c) The use of the caravan or vehicle as a residence significantly reduces the amenity or enjoyment of the local area.

2.2. Section 216, 218

As required by the Act, this Policy also applies to orders issued by Council under:

Section 216 – Requiring the owner of a private road to carry out roadworks

- *Example:* An order to repair potholes in a private road

Section 218 – requiring the owner of land adjoining a road to carry out specified work

- *Example:* An order to construct, remove or repair a vehicle crossing between the road and the property.

2.3. Section 217 and 262

While not required by the Act, Council will apply this policy, where appropriate, to orders issued under:

section 217 -requiring the owner of infrastructure within a road to carry out maintenance or repair work

- *Example* - an order to repair pipes located beneath a road

section 262 (power of enforcement) of the Act.

- *Example* - an order directing a person to cease an activity that is contrary to the Act.

2.4. General principles

When Council (including delegated officers) is considering issuing an order under this policy, it will investigate and consider all relevant circumstances, where necessary, before making a decision including:

- a) The severity of the incident or circumstance
- b) The hazard or danger posed to the community
- c) The risk to health and safety of the community
- d) The number of occurrences of the activity or incident
- e) The impact of any previous actions to deal with the activity or incident
- f) The significance of the breach, any other public interest or well-being considerations
- g) The availability of a more appropriate response by Council
- h) Whether there is sufficient evidence upon which Council may rely to exercise its order making powers
- i) Number of complaints received in respect of the matter (if any)
- j) The occurrence of other similar activities throughout the city.

2.5. Minimum standards for orders

Before making an order, unless the matter is urgent, Council (including delegated officers) will take the following action:

- a) Give the person to whom an order is intended to be directed a notice in writing stating the:
 - i) Proposed action
 - ii) Terms of the proposed order
 - iii) Period within which compliance with the order would be required
 - iv) Penalties for non-compliance
 - v) Reasons for the proposed order
 - vi) Invite the person notified to give reasons, within a specified time, as to why the proposed action should not be taken
- b) Take reasonable steps, within available resources, to resolve the matter through discussion and agreement. This may not occur where there is a threat to life, an immediate risk to public health or safety or an emergency situation
- c) Council may obtain (independent) expert advice in determining whether to issue an order

- d) Where notice of a proposed order is given to someone other than the landowner, Council will take, reasonable steps to provide a copy of the notice on the owner of the land
- e) After considering any feedback from the person who received the notice, Council may make the order as originally proposed, or make the order with changes, or decide not to issue the order
- f) An order must be given to the person it is addressed to. Where appropriate Council will also take reasonable steps to provide a copy of the order to the owner of the land
- g) Council may change or cancel an order if it considers it appropriate to do so.

This policy recognises that, in some circumstances, it may not be appropriate to issue a notice of intention before issuing an order, particularly where a **section 262 cease and desist** order is needed to stop a breach of the Act or by-law.

2.6. Review rights

Anyone who receives an order has the right to apply for a review of the order. The application must be lodged within 14 days of receiving the order. Council will include information about this review right in every order that is issued.

2.7. Non-compliance with an order

If an order under sections 216, 218, 254 is not complied, Council may carry out the required work. Where practicable, Council will notify the owner and/or occupier undertaking the work on their behalf.

Council will enforce non-compliance in accordance with its **Compliance & Enforcement Policy**.

Council may recover any reasonable costs incurred from the person who failed to comply with the order.

Council may require payment of a recoverable amount within at least 28 days. If unpaid, interest may apply and Council may impose a charge over the land for the outstanding amount and interest.

Failure to comply with a Council order is an offence and may attract penalties under the Act, specifically.

- a) Non-compliance with an order under Section 258 may result in a maximum fine of **\$2,500** and an expiation fee of **\$210**.
- b) If an order under section 217 is not complied, Council may complete the required work, recover the costs from the owner and impose a maximum penalty of \$5,000.
- c) If an order issued under section 262 is not complied with, Council may take necessary action to carry out the order recover associated costs.

2.8. Alterations to the policy

Any future amendment or alteration to the policy, or a substitution of a new policy, will be subject to the public consultation provisions of section 259(2) of the Act, unless the alteration has only minor significance and is likely to attract little or no community interest.

3. Definitions

For the purposes of this policy the following definitions apply:

Act

Local Government Act 1999

CEO

Refers to the Chief Executive Officer of the City of Tea Tree Gully, including a person acting in, or exercising delegated authority under, that position.

Council

The Council of the City of Tea Tree Gully, including any person acting under delegated authority or authorisation where the context permits.

City

The geographic area covered by the City of Tea Tree Gully.

Urgent

Refers a situation that is life threatening or threatening the safety of persons or substantial assets of a third party.

4. Legislative framework

4.1. Reference to legislation

The following legislation applies to this policy:

[Local Government Act 1999](#)

Section 259 of this Act requires Council to take reasonable steps to prepare and adopt policies for the operation of Part 2 of Chapter 12 of the Act, which deals with the making of orders under sections 216, 218, 254.

Section 259(5) requires Council to prepare and adopt a policy subject to public consultation by placing a notice in a newspaper circulating in the area of the council, giving notice of the place or places at which copies of the draft are available for inspection (without charge) and purchase (on payment of a fee fixed by the council) and inviting interested persons to make written representations on the draft within a period specified by the council (being a period of at least 4 weeks).

4.2. Other references

Council's document including:

- a) Compliance & [Enforcement Policy](#)
- b) Community Safety Policy
- c) [Fees and Charges Register](#)
- d) [Road Alteration or Encroachment Policy](#)

This policy is based on a model policy developed by the Local Government Association.

5. Strategic Plan 2030

5.1. Strategic objectives

The following strategic objectives and aspirations in Council's Strategic Plan 2030 are the most relevant to this report:

Strategic Objective	Comments
1. Our Community We create opportunities for people to connect with one another and to their local community.	

1.4.	The safety and wellbeing of our community is a priority.	This policy supports Council in protecting and maintaining public infrastructure by providing a framework for addressing damage to Council assets. It contributes to a safe and healthy environment, enhances the amenity of the local area, and helps protect the community from hazards and nuisances arising from damaged or unsafe public infrastructure.
4.	Our Places Our City is a desirable place to live, stay and play.	
4.1.	Our neighbourhoods are well planned, safe, connected and accessible with a focus on active methods of travel.	This policy enables Council to require a person who has damaged Council assets to repair or reinstate those assets for the benefit and convenience of the community.
5.	Our Leadership We are trusted to make good decisions that are in the best interest of our community.	
5.3.	Our engagement is meaningful and we keep our community informed about Council initiatives.	This policy is prepared and adopted in accordance with the requirements of the <i>Local Government Act 1999</i> (SA). Before adopting the policy, Council must undertake public consultation by making the draft policy available for inspection and inviting interested persons to make written submissions in relation to the draft policy.
5.4.	Our planning and decision making is evidence based, consistent and focused on outcomes for the future.	The Order Making Policy gives Council powers to make and enforce By-laws, ensure compliance with the Local Government Act 1999 (the Act).

5.2. Organisation Plan

Our Strategic Plan is supported by an Organisation Plan which focuses on four key pillars of customer care, trust, teamwork and growth. The pillar most relevant to this policy is Customer Care.

6. Policy Implementation

This Policy will be implemented by the Chief Executive Officer or relevant portfolio General Manager and managed in accordance with Council's scheme of delegations.

Record number	E26/68700
Responsible Manager	Manager Regulatory Services
Other key internal stakeholders	General Manager Community Services
Last reviewed	25 August 2026
Adoption reference	Council
Resolution number	1036
Previous review dates	17/08/22, 16/10/2019, 15/02/17, 20/11/13, 10/08/10, 30/05/06, 25/2/03, 11/12/01
Legal requirement	Section 259 of the Local Government Act 1999 requires Council to take reasonable steps to prepare and adopt policies for the operation of Part 2 of Chapter 12 of the Act, which deals with the making of orders under sections 216, 218 and 254 Community consultation is required prior to adoption of policy, unless amendment is of only a minor significance.
Due date next review	2030
Delegations	N