

Order Making Policy



Record number	D22/24034
Responsible Manager	Manager Community Safety
Other key internal stakeholders	Director Community & Cultural Development
Last reviewed	17 August 2022
Adoption reference	Governance and Policy Committee
Resolution number	179
Previous review dates	16/10/2019, 15/02/17, 20/11/13, 10/08/10, 30/05/06, 25/2/03, 11/12/01
Legal requirement	<p>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</p> <p>Community consultation is required prior to adoption of policy, unless amendment is of only a minor significance.</p>
Due date next review	2025

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1. PURPOSE

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

The exercise of Council's order making power, in accordance with this policy and the relevant statutes, co-exists with Council's other regulatory powers. For example, the Council has power to make and enforce By-laws in certain circumstances and to enforce compliance with the requirements of the Local Government Act 1999 and a range of other statutes.

2. POLICY

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

2.1 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 particular 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.

The matters to which this policy applies are as follows:

2.1.1 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:

- a. A dangerous fence adjoining any road, community land or public place
- b. Where there are overhanging branches, overgrown vegetation or structures on land adjoining a public place which obstruct streets
- c. Where there is drainage of water across the road
- d. Where a flag, banner, flagpole or sign intrudes into a public place.

2.1.2 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:

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

2.2 Section 216, 218

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 a private road to carry out specified roadworks) and section 218 (power to require owner of adjoining land to carry out specified work).

Examples of such circumstances include:

- a. Section 216 – an order issued to the owner of a private road to repair pot holes in the private road
- b. Section 218 – 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

2.3 Section 217 and 262

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) and section 262 (power of enforcement) of the Act.

Examples of such circumstances include:

- a. Section 217 – an order issued to the owner of pipes under a road to repair the pipes
- b. Section 262 – an order issued against a person who is engaging in conduct that is a contravention of the Act to stop the conduct.

2.4 General Principles

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

- 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 circumstances are Urgent, the 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. Reasonable steps will be taken, within available resources, to resolve matters 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
- c. Council may obtain (independent) expert evidence in determining whether to issue an order
- d. Where notice of a proposed order has been given to a person who is not the owner of the relevant land, reasonable steps must be taken to serve a copy of the notice on the owner of the land
- e. After considering the representations made by the person to whom notice of the order is directed, an order may be made in terms of the original proposal or a modification of the original proposal or determine not to proceed with making an order
- f. An order must be served on the person to whom it is addressed. Reasonable steps must be taken to serve a copy of the order on the owner of the land
- g. An order may be varied or revoked if it is considered appropriate.

This policy recognises that there may be circumstances where it is not appropriate to issue a notice of intention, particularly in relation to a “cease and desist” order under section 262 to address a breach of the Act or by-law.

2.6 Review Rights

Any person to whom an order is issued has a right to appeal against the order. Any such appeal must be lodged within 14 days of that person's receipt of the order. The Council will ensure that reference to this right of review is included in any order issued.

2.7 Non-compliance with an Order

Where an order issued under section 216, 218, 254 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.

Wherever practicable, Council will first notify the landowner and/or occupier of its intention to undertake default works where the recipient of the order has failed to comply with its requirements.

Council's Enforcement Policy will be taken into account in determining the manner in which non-compliance with an order will be enforced.

The reasonable costs and expenses incurred by Council in taking action under this section may be recovered by Council as a debt from the person who failed to comply with the requirements of the order.

Where an amount is recoverable by Council, Council may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid and, if the amount is not paid by the person within that period, the person is liable to pay interest and Council may impose a charge over the land for the unpaid amount, together with interest, in accordance with section 257(5) of the Act.

Non-compliance with an order of Council is an offence for which a person may incur a statutory penalty provided for in the Act. Section 258 of the Act provides for a maximum penalty of \$2,500 and an expiation fee of \$210 for failure to comply with an order issued under the Act.

Where an order issued under section 217 is not complied with within the time specified within the order, Council may carry out the action required by the order and recover the cost of doing so as a debt for the owner and the owner is guilty of an offence and liable to a maximum penalty not exceeding \$5,000.

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, is guilty of an offence and liable to a maximum penalty not exceeding \$5,000.

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

Urgent

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

4. LEGISLATIVE FRAMEWORK

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).

4.1 Other references

Council's document including:

- a. [Enforcement Policy](#)
- b. [Fees and Charges Register](#)
- c. [Road Alteration or Encroachment Policy](#)

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

5. STRATEGIC PLAN/POLICY

5.1 Strategic Plan

The following strategic objectives in Council's Strategic Plan 2025 are the most relevant to this report:

Objective	Comments
Environment	
<i>Environmentally valuable places and sites that are flourishing and well cared for</i>	
<i>A community that is protected from public and environmental health risks</i>	
Places	
<i>Streets, paths, open spaces and parks are appealing, safe and accessible</i>	

5.2 Organisation Plan

Our Strategic Plan is supported by an Organisation Plan which focuses on five key themes of customer care, learning & growth, future capability and sustainable operations. The key theme most relevant to this policy is sustainable operations, in ensuring that we make consistent, informed decisions which are evidence based.

6. POLICY IMPLEMENTATION

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