

	<h1>Order Making Policy</h1>	Version No:	3.1
		Issued:	November 2000
		Last Review:	February 2019
		Next Review:	February 2022

Name of Council	Wudinna District Council
File reference	9.63
Responsibility:	Governance
Minutes reference:	10.5.2, 19 March 2019
Next review date:	Council will endeavour to review this policy within 12 months following Council election
Applicable Legislation:	Section 259 of the Local Government Act 1999 Sections 216, 217, 218, 254 and 299 of the Local Government Act 1999
Related Policies:	Enforcement Policy; Complaints Procedures Policy; Request for Service Policy

INDEX

Clause	Title	Page
1	Introduction	1
2	Scope	1
3	Guiding Principles	2
4	Process and Procedure	2
5	Review Rights	2
6	Non-Compliance with an Order	3
7	Responsibilities and Delegations	3
8	Council Endorsement of the Policy	3
9	Review and Evaluation	3
10	Availability of the Policy	3
Attachment 1	Local Government Act 1999 extract	4
Operational Checklist	Operational Checklist	6

1. INTRODUCTION

Wudinna District Council is committed to using the order making powers available to it under the *Local Government Act 1999* ('the Act') in such a way as to facilitate a safe and healthy environment, to improve the amenity of a locality, and generally for the good governance of its area.

This Order Making Policy is prepared and adopted pursuant to section 259 of the Act and sets out the steps Council will take in the making of orders.

2. SCOPE

Section 259 of the Act requires each Council to take reasonable steps to prepare and adopt policies concerning the operation of Part 2 of Chapter 12 of the Act. Part 2 deals with the making of orders.

This Policy will apply to those circumstances listed in section 254 which states that 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**).

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), section 217 (power to order owner of infrastructure on roads to carry out specified maintenance or repair work), section 218 (power to require owner of adjoining land to carry out specified work) and section 299 (vegetation clearance).

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.

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3. GUIDING PRINCIPLES

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

Each case for the possible use of the order making powers will be considered on its merits.

Factors that Council will consider include:

- Severity of the incident
- Hazard/danger posed to the community
- Risk to health/safety of the community
- Detraction from the amenity of the locality
- Repeated occurrence of the activity/incident (e.g. duration, previous offences)
- Impact of any previous actions to overcome the problem
- Is the breach significant/substantial?
- Would an informal warning letter be sufficient?
- Are there any public interest issues?
- Whether there is sufficient evidence upon which Council may rely to exercise its order making powers
- The offender's attitude
- Number of complaints received in respect of the matter (if any).

4. PROCESS AND PROCEDURE

Except in the case of an emergency described below, Council will take reasonable steps, within available resources, to resolve cases of local nuisance by negotiation and agreement before issuing an order.

- Personal approach by Council officers; and
- Informal warning letter prior to commencing the formal order making process.

Except in the case of an emergency described below, before making an order Council will give notice of its intention to make an order in accordance with section 255 of the Act by:

Giving the person to whom an order is intended to be directed a notice in writing stating the:

- proposed action
- terms of the proposed order (i.e. 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; and
- reasons for the proposed action; and
- Inviting the person notified of the opportunity to give reason/s, within a specified time, why the proposed action should not be taken.

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:

- a threat to life; or
- an immediate threat to public health or public safety; or
- an emergency situation.

5. REVIEW RIGHTS

Pursuant to section 256 any person to whom an order is issued (including an order issued under sections 254, 216, 217, 218 or 299 of the Act) 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.

	<h1>Order Making Policy</h1>	Version No:	3.1
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6. NON-COMPLIANCE WITH AN ORDER

If an order is not complied with within the time fixed for compliance (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.

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.

Where an order issued under section 217 is not complied within the specified time frame:-

- Council may carry out the action required by the order and recover the cost of doing so as a debt to the owner; and
- The owner is guilty of an offence and liable to a maximum penalty not exceeding \$5000.

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
- expiation fee of \$210

For failure to comply with an order issued under the Act.

7. RESPONSIBILITIES AND DELEGATIONS

This policy will be enforced by Authorised Persons who have been appointed (in writing) by the Council under Section 260 of the Act.

Council may also choose to delegate the power to issue orders under sections 254, 216, 217, 218 and 299 of the Act to Council staff, in which case, Council will ensure appropriate delegations are in place.

8. COUNCIL ENDORSEMENT OF THE POLICY

This Policy was endorsed by Council on 19 March 2019. Council endorsed the policy following public consultation on its Draft Policy. Written submissions commenting on the Draft Policy were invited within 28 days of a notice appearing in the local newspaper (**Granite/West Coast Sentinel**). Submissions received were considered and taken into account in preparing this policy.

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

9. REVIEW AND EVALUATION

The effectiveness of the policy will be reviewed and evaluated within twelve months of a general election of Council or on significant change to legislation or aspects included in this policy.

The Chief Executive Officer will report to Council on the outcome of the evaluation, and make recommendations for amendment, alteration or substitution of a new Policy.

10. AVAILABILITY OF POLICY

This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website www.wudinna.sa.gov.au Copies will also be provided to interested members of the community upon request, and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.

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ATTACHMENT 1

Local Government Act 1999

Chapter	12	Regulatory Functions
Part	2	Orders
Division	1	Power to make orders
Section	254	Power to make orders

“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.¹”

¹A reference in the table to an animal or animals includes birds and insects.

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
1. Unsightly condition of land <i>Refer to Local Nuisance and Litter Control Act 2016.</i>		
2. Hazards on lands adjoining a public place <i>(1) To fence, empty, drain, fill or cover land (including land on which there is a building or other structure).</i> <i>(2) To remove overgrown vegetation, cut back hanging branches, or to remove a tree.</i> <i>(3) To remove or modify a flag or banner, a flagpole or sign, or similar object or structure that intrudes into a public place.</i> <i>(4) Where the public place is a road-to take action necessary to protect the road or to remove a hazard to road users.</i> <i>Examples</i> <ul style="list-style-type: none"> • <i>To fill an excavation, or to prevent drainage of water across the road.</i> • <i>To construct a retaining wall or to remove or modify a fence.</i> • <i>To fence land to prevent the escape of animals.</i> • <i>To remove a structure or vegetation near an intersection.</i> 	<i>(1) A hazard exists that is, or is likely to become, a danger to the public</i> <i>(2) The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place</i> <i>(3) The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place.</i> <i>(4) A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.</i>	<i>(1) The owner or occupier of the land.</i> <i>(2) The owner or occupier of the land.</i> <i>(3) The owner or occupier of the land.</i> <i>(4) The owner or occupier of the land.</i>
3. Animals that may cause a hazard or nuisance <i>Refer Local Nuisance and Litter Control Act 2016</i>		

	<h1>Order Making Policy</h1>	Version No:	3.1
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<p>4. Inappropriate use of vehicle <i>To refrain from using a caravan or vehicle as a place of habitation.</i></p>	<p><i>A person using a caravan or vehicle as a place of habitation in circumstances that:</i></p> <p><i>(a) present a risk to the health or safety of the occupant; or</i></p> <p><i>(b) cause a threat of damage to the environment; or</i></p> <p><i>(c) detract significantly from the amenity of the locality.</i></p>	<p><i>The owner or occupier of the land or a person apparently occupying the caravan or vehicle.</i></p>
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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).

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

1. A council may, by order in writing to the owner of a structure or equipment (including pipes, wires, cables, fittings and other objects) installed in, on, across, under or over a road, require the owner—
 - a) to carry out specified work by way of maintenance or repair; or
 - b) to move the structure or equipment in order to allow the council to carry out Roadwork.

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).

299—Vegetation clearance

1. A council may, on the application of the owner or occupier of the land (the **relevant land**), by order under this section, require the owner or occupier of adjoining land to remove or cut back vegetation encroaching on to the relevant 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).

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Operational Checklist

Action or Decision Required	Issues to Consider
Order Making Powers - sections of the legislation the policy will apply to.	Council may wish to include other order making provisions in the policy which are outside the legislative requirement for inclusion: <ul style="list-style-type: none"> S.217 (Power to order owner of infrastructure installed on road to carry out specified maintenance or repair work)
Order Making Powers - determine whether to list specific cases in which it intends to utilise the order making powers in addition to those specified in the table in section 254 of the Act.	Council may wish to state in the policy that it is council's intention to deal with a particular local nuisance (e.g. animal nuisance previously covered by a by-law). Council needs to consider this issue in context with its review of by-laws.
Identify principles which council considers central to effective resolution of local hazards.	Council needs to consider: <ul style="list-style-type: none"> What factors it will take into account when considering each case on its merits; and How it will use the order making provisions to achieve council's policy statement
Penalties – Inclusion of penalties that apply.	Where council has stated that the policy will apply to additional sections of the legislation, penalties relating to these sections will need to be included.
Delegations – Inclusion of any conditional arrangements.	Council will need to consider if any delegations to council staff will be subject to conditions and/or limitations.
Fee – Purchase of copy of policy.	Council needs to determine if a fee for purchase of the policy will apply. Any fee set by council should be consistent with that applying for the purchase of other council policies.