

Order Making Policy



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File Number	9/POL/OMP/1
Responsible Officer	Director - Developmental & Community Services
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Last reviewed at Council Meeting	21 March 2023
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Due date of next Review	2026 Election

1. Introduction

- 1.1 Mid Murray 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.
- 1.2 This 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

- 2.1 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.
- 2.2 The order making powers and processes under the Act are separate and distinct from Council's powers to make By-laws for the regulation of matters specified by the Act. The exercise of the Council's order making powers, co-exist with the Council's other regulatory powers such as its powers to make By-laws under the Act.
- 2.3 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 **Annexure 1**).
- 2.4 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 218 (power to require owner of adjoining land to carry out specified work) and Section 254 (vegetation clearance).
- 2.5 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.

3. Policy

3.1 Guiding Principles

- 3.1.1 Council is dedicated to facilitating a safe and healthy environment and to maintaining and improving the amenity of the area. Complaints will be dealt with in a timely manner, adhering to the principles of natural justice.
- 3.1.2 In making orders, Council will consider the following principles, which are considered central to effective resolution of local nuisances on private land.
- 3.1.3 Each case considered on its merits
 - 3.1.3.1 Each case for the possible use of the order making powers will be considered on its merits.
 - 3.1.3.2 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?
 - What evidence is available?
 - What is the offender's attitude?

3.2 Process and Procedure

Except in cases 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. Appropriate measures will be taken prior to making an order including:

- 3.2.1 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;
 - reasons for the proposed action.
- 3.2.2 Inviting the person to show, within a specified time, why the proposed action should not be taken.
- 3.2.3 Council may, after considering any representations made within the specified time as detailed on the notice:
 - make an order in accordance with the terms of the original proposal; or
 - make an order with modifications from the terms of the original proposal;
 - determine not to proceed with an order; or
- 3.2.4 Where a notice of a proposed order has been given to a person who is not the owner of the relevant land, Council must take reasonable steps to serve a copy of the notice on the owner of the land.
- 3.2.5 Threat Emergency

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.

3.3 Review Rights

Pursuant to section 256 any person to whom an order is issued (including an order issued under sections 254, 216 or 218 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.

3.4 Non-compliance with an order

- 3.4.1 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.
- 3.4.2 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.
- 3.4.3 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.
- 3.4.4 Where an order is issued under section 217, if the order is not complied with within the time specified in 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.

3.5 Penalties

The Act prescribes penalties for failing to comply with an order.

- 3.5.1 Section 258 of the Act provides for a maximum penalty of \$2,500.00 and an expiation fee of \$210.00 for failure to comply with an order issued under Section 254 of the Act.
- 3.5.2 Section 216 of the Act (Power to order owner of private road to carry out specified roadwork) provides for a maximum penalty of \$2,500.00 and an expiation fee of \$210.00 for failure to comply with an order issued under Section 216 of the Act.
- 3.5.3 Section 217 of the Act (Power to order owner of infrastructure installed on road to carry out specified maintenance or repair work) provides for a maximum penalty of \$5,000.00 and an expiation fee of \$210.00 for failure to comply with an order issued under Section 217 of the Act.
- 3.5.4 Section 218 of the Act (Power to require owner of adjoining land to carry out specified work) provides for a maximum penalty of \$2,500.00 and an expiation fee of \$210.00 for failure to comply with an order issued under Section 218 of the Act.

3.6 Responsibilities and Delegations

- 3.6.1 This policy will be enforced by Authorised Persons who have been appointed (in writing) by the Council under section 260 of the Act i
- 3.6.2 Council may also choose to delegate the power to issue orders under sections 254, 216 and 218 of the Act to Council staff, in which case, council will ensure appropriate delegations are in place.

3.7 Council endorsement of this Policy

- 3.7.1 This Policy was endorsed by Council on 10 September 2019. Council endorsed the Policy following public consultation.
- 3.7.2 Written submissions commenting on the draft Policy were invited within 28 days of a notice appearing in the local newspapers, The River News 7 August 2019 The Leader 7 August 2019 and the Murray Valley Standard 8 August 2019. Submissions received were considered and taken into account in preparing this Policy.
- 3.7.3 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.

4. Policy Responsibility

The Director – Development & Community Services is responsible for ensuring the proper operation of this Policy.

5. Availability/Accessibility

- 5.1 This [Policy](#) and Council's [Fees & Charges Register](#) are available to be downloaded free of charge from Council's website: www.mid-murray.sa.gov.au.
- 5.2 This Policy is available for inspection at Council's principal office during ordinary business hours. Hard copies, for a fee in accordance with Council's schedule of Fees and Charges, can be provided upon request.

6. Legislative Framework / Other References

- 6.1 [Local Government Act 1999](#)

7. Document History

- 7.1 This Policy shall be reviewed at least every four (4) years or more frequently if legislation or Council requires.
- 7.2 The review will include recommendations for amendment, alteration or substitution of a new Policy.
- 7.3 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.

Version	Adopted	Minute	Description of Change
1	8 September 2015	17426/4	Policy endorsed and adopted.
1.1	January 2018		Updated with new Policy document format and layout. Content of Policy not changed
2	10 September 2019	20835/3	Reviewed with minor changes, references to Local Nuisances and wording made more succinct, adopted following public consultation process.
3	21 March 2023	CM 03-2023/019	Reviewed by Council, no significant changes made, updated to new policy template.

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

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.

Column 1	Column 2	Column 3
To do or to refrain from doing what?	In what circumstances?	To whom?
2. Inappropriate use of vehicle		
To refrain from using a caravan or vehicle as a place of habitation.	A person is using a caravan or vehicle as a place of habitation in circumstances that— a) present a risk to the health or safety of an occupant; or b) cause a threat of damage to the environment; or c) detract significantly from the amenity of the locality.	The owner or occupier of the land or a person apparently occupying the caravan or vehicle
2)	A reference in the table to an animal or animals includes birds and insects.	
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).	