

1. Introduction

- 1.1 The District Council of Mount Remarkable 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 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

- 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 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).
- 2.3 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 a road to carry out specified maintenance or repair work), and section 218 (power to require owner of adjoining land to carry out specified work)¹.
- 2.4 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 2016* will be dealt with in accordance with the procedures set out in that Act.

3. Guiding Principles

- 3.1 When considering making an order within the scope of this policy the District Council of Mount Remarkable will consider the following principles, which are considered central to the effective resolution of local nuisances on private land:
 - 3.1.1 Severity of the incident.
 - 3.1.2 Hazard/danger posed to the community.
 - 3.1.3 Risk to health/safety of the community.

¹ See sections 216(2), 218(2)

- 3.1.4 Detraction from the amenity of the locality.
- 3.1.5 Occurrence of the activity/incident eg frequency, duration.
- 3.1.6 Impact of any previous actions to overcome the problem.
- 3.1.7 Are there any public interest issues?
- 3.1.8 Whether there is sufficient evidence upon which Council may rely to exercise its order making powers.
- 3.1.9 Implications of not taking any action.
- 3.1.10 The offender's attitude.
- 3.1.11 Number of complaints received in respect of the matter (if any).
- 3.1.12 Procedural fairness and natural justice.

4. Process and Procedure

- 4.1 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.
- 4.2 The initial response to complaints of local nuisance will generally be a personal visit or telephone call by an authorised officer to attempt to resolve the matter with as little formality as possible.
- 4.3 If this approach is not effective, a letter detailing the complaint, the required action to resolve the matter and stipulating a reasonable timeframe, will be sent to the occupier of the land. In situations where the matter is assessed by the appropriate Director as having a level of urgency for action to be undertaken, the step of sending an initial letter detailing the complaint and requesting action may be forgone and Officers can immediately begin the formal order making process.
- 4.4 If a letter still does not result in a satisfactory outcome the formal order making process may be instigated.
- 4.5 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:
 - 4.5.1 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; and
 - reasons for the proposed action; and
- 4.5.2 Inviting the person notified of the opportunity to give reason/s, within a specified time, why the proposed action should not be taken.
- 4.6 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:
- 4.6.1 a threat to life; or
 - 4.6.2 an immediate threat to public health or public safety; or
 - 4.6.3 an emergency situation.

5. Review Rights

- 5.1 Pursuant to section 256 any person to whom an order is issued (including an order issued under sections 254, 216, 217 or 218 of the Act) has a right to appeal against the order.
- 5.2 Any such appeal must be lodged within 14 days of that person's receipt of the order.
- 5.3 The Council will ensure that reference to this right of review is included in any order issued.

6. Non-compliance with an Order

- 6.1 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.
- 6.2 The reasonable costs and expenses incurred by Council in acting under this section may be recovered by Council as a debt from the person who failed to comply with the requirements of the order.
- 6.3 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.
- 6.4 Non-compliance with an order of Council is an offence for which a person may

incur a statutory penalty provided for in the Act.

- 6.5 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.
- 6.6 Where an order is issued under section 217, if the order is not complied with within the time specified in the order:
 - 6.6.1 Council may carry out the action required by the order and recover the cost of doing so as a debt for the owner; and
 - 6.6.2 The owner is guilty of an offence and liable to a maximum penalty not exceeding \$5,000.00.

7. Responsibilities & Delegations

- 7.1 This policy will be enforced by Authorised Persons who have been appointed (in writing) by the Council under section 260 of the Act².
- 7.2 Council may also choose to delegate the power to issue orders under sections 254, 216, 218 and 299 of the Act to Council staff, in which case, Council will ensure appropriate delegations are in place.

² Authorised Persons have powers under section 261 of the Act to enforce breach of orders by way of expiation.

8. Document administration and control

Policy title:	Order Making Policy
Policy number:	04.41
Policy type:	Council / Statutory
Responsible officer:	Director Infrastructure & Regulatory
First issued / adopted:	19 May 2015, reference 078-8388
Review period:	Reviewing within 12 months following the conclusion of a periodic election, inline with legislative changes, or by resolution of Council.
Last reviewed:	18 May 2021, reference [103-2021] 18 April 2023 [070-2023]
Next review date:	by November 2027
Version:	Version 2
Date revoked:	n/a
Applicable legislation:	Local Government Act 1999 Local Nuisance and Litter Control Act 2016
Related documents:	Nil
Public consultation required / undertaken:	Yes Any amendment, alteration or substitution of a new policy will be made only after public consultation in accordance with the Act unless the Council has determined that the amendment is of only minor significance.
Availability	This Policy is available for inspection at the Council office and any person may obtain a copy of this Policy upon payment of the fee fixed by Council in accordance with Council's Fees and Charges adopted each financial year. It is also available on Council's website mtr.sa.gov.au . Any grievance in relation to this policy or its application should be forwarded in writing to the Chief Executive Officer of the Council.
File reference:	W:\4. Policy Manuals\Current Policy Manual

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. Unsightly condition of land		
Refer to Local Nuisance and Litter Control Act 2016		
2. 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 fence land to prevent the escape of animals.

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
<ul style="list-style-type: none"> To construct a retaining wall or to remove or modify a fence. 	<ul style="list-style-type: none"> 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		
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— <ul style="list-style-type: none"> (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).

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.*
- (2) *If the order is not complied with within a reasonable time fixed in the order—*
 - (a) *the council may itself take the action required by the order and recover the cost of doing so as a debt from the owner; and*
 - (b) *the owner is guilty of an offence and liable to a penalty not exceeding \$5 000.*
- (3) *Subsection (1) and (2) do not apply to the owner of electricity infrastructure, public lighting infrastructure or gas infrastructure if the Commission has determined, on application by the owner, that there are reasonable grounds for not requiring the owner to take the action specified in the order.*
- (4) *In this section—*

Commission means the Essential Services Commission established under the Essential Services Commission Act 2002;

electricity infrastructure has the same meaning as in the Electricity Act 1996;

gas infrastructure has the same meaning as in the Gas Act 1997, but does not include a transmission pipeline within the meaning of the Petroleum Act 2000;

owner of a structure or equipment includes a lessee or licensee;

public lighting infrastructure has the same meaning as in the Electricity Corporations (Restructuring and Disposal) Act 1999.

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).*