



City of
Norwood
Payneham
& St Peters

NAME OF POLICY: Order Making Policy

POLICY MANUAL: Governance

GENERAL

The City of Norwood Payneham & St Peters (the Council) is responsible for the government and management of its area at a local level. To fulfil its functions, the Council has a range of statutory powers. These powers enable the Council to exercise its regulatory functions by making policies, orders and by-laws.

The Council has resolved to develop a policy in relation the exercise of the Council's order-making powers pursuant to Part II of Chapter 12 of the *Local Government Act 1999* (the Act). The Council is committed to using the order-making powers in such a way as to facilitate a safe and healthy environment, to improve the amenity of the locality, and generally for the good governance of its area.

This Policy is prepared and adopted pursuant to Section 259 of the Act and sets out the guiding principles, process and procedure that the Council will follow in the making of orders.

DISCUSSION

In considering whether to make an order under Part II of Chapter 12 of the Act, the Council must deal with the particular case on its merits but must also take into account this Policy, which is required to be prepared under Section 259 of the Act.

SCOPE OF POLICY

Section 254 of the Act provides that the Council may order specified persons to do or refrain from doing a thing under certain circumstances, as listed in Section 254.

Additionally, the Act provides for the making of orders by the 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).

This Policy will apply to those circumstances listed in Section 254, 216 and 218 of Act, along with Section 217 of the Act, as set out **Attachment A** to this Policy.

Local nuisances (other than those found in the Act) are contained within 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, and are beyond the scope of this Policy.

GUIDING PRINCIPLES

The Council will consider (to the extent that it is relevant and necessary) the following principles in the exercise of its powers to make orders within the scope of this Policy:

- the severity of the incident or circumstance;
- the hazard or danger posed to the community;
- the risk to health or safety of the community;
- detraction from the amenity of the locality;
- repeated occurrence of the activity or incident (eg duration, previous offences);
- the impact of any previous actions to deal with the activity or incident;
- the number of complaints received in respect of the matter (if any);
- whether the breach is significant / substantial;
- whether there is sufficient evidence upon which the Council may rely to exercise its order-making powers;
- the availability of more appropriate response by the Council (eg would an informal warning letter be sufficient); and
- any other public interest considerations.

PROCESS AND PROCEDURE

The Council will take reasonable steps (within available resources) to resolve matters that fall within the scope of this Policy by negotiation and agreement, before issuing an order, except in the case of an emergency (as set out below).

1. **Notice of Intention to Make Order:** Before making an order, except in the case of an emergency, the Council will give notice of its intention to make an order in accordance with Section 255 of the Act by:
 - 1.1 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 (ie 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 order;
 - and
 - 1.2 inviting the person notified of the opportunity to give reason/s within a specified time (of reasonable period), as to why the proposed action should not be taken.
2. Where notice of a proposed order has been given to a person who is not the owner of the relevant land, the Council must take reasonable steps to serve a copy of the notice on the owner of the land.

3. **Making an Order:** After considering the representations made by the person to whom notice of the order is directed, the Council may:
 - make an order in terms of the original proposal; or
 - make an order with modifications from the terms of the original proposal of the original proposal; or
 - determine not to proceed with making an order.
4. An order must be served by the Council on the person to whom it is addressed. If the person to whom the notice and order are addressed is not the owner of the land, the Council must take reasonable steps to serve a copy of the notice and order on the owner of the land.
5. The Council will proceed to make an order without negotiation or notice, in accordance with Section 255(12) of the Act, where the 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.
6. The Council may, at the request, or with the agreement, of the person to whom an order is directed, vary any order or may, on its own initiative, revoke an order if satisfied that it is appropriate to do so.

REVIEW RIGHTS

Pursuant to Section 256 of the Act, a person to whom an order is directed has a right to appeal against the order. Any such appeal must be lodged within fourteen (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.

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 of the Council in taking such action may be recovered by the Council from the person who failed to comply with the order as a debt.

Where an amount is recoverable from a person by the Council, the 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 the 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 is issued by the Council under Section 217 of the Act and the order is not complied with within the time specified in the order, the Council may carry out the action required by the order and recover the cost of doing so as a debt from the owner.

PENALTIES

Non-compliance with an order of the Council is an offence for which a person may incur statutory penalties 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 a person fails to comply with an order of the Council issued under Section 217 of the Act, the person is guilty of an offence and liable to a maximum penalty not exceeding \$5,000.

RESPONSIBILITIES & DELEGATIONS

This Policy will be enforced by Authorised Persons who have been appointed (in writing) by the Council under Section 260 of the Act. The Council may also choose to delegate the power to issue orders under Sections 254, 216, 217 and 218 of the Act to other Council Staff.

REVIEW PROCESS

This Policy will be reviewed by the Council every three (3) years.

INFORMATION

The contact officer for further information at the City of Norwood Payneham & St Peters is Council's Manager, Governance & Legal, telephone 8366 4626.

ADOPTION OF THE POLICY

This Policy was adopted by Council on 8 April 2002.

This Policy was reviewed and adopted by Council on 2 September 2019.

This Policy was reviewed and adopted by Council on 4 October 2022.

TO BE REVIEWED

October 2025

ATTACHMENT A

Local Government Act 1999

Section 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 <i>To do or to refrain from doing what?</i>	Column 2 <i>In what circumstances?</i>	Column 3 <i>To whom?</i>
<p>1. Unsightly condition of land</p> <p>Refer to Local Nuisance and Litter Control Act 2016</p>		
<p>2. Hazards on land adjoining a public place</p> <p>(1) <i>To fence, empty, drain, fill or cover land (including land on which there is a building or other structure.</i></p>	<p><i>A hazard exists that is, or is likely to become, a danger to the public.</i></p>	<p><i>The owner or occupier of the land.</i></p>
<p>(2) <i>To remove overgrown vegetation, cut back overhanging branches, or to remove a tree.</i></p>	<p><i>The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place.</i></p>	<p><i>The owner or occupier of the land.</i></p>
<p>(3) <i>To remove or modify a flag or banner, a flagpole or sign, or similar object or structure that intrudes into a public place.</i></p>	<p><i>The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place.</i></p>	<p><i>The owner or occupier of the land.</i></p>
<p>(4) <i>Where the public place is a road—to take action necessary to protect the road or to remove a hazard to road users.</i></p>	<p><i>A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.</i></p>	<p><i>The owner or occupier of the land.</i></p>
<p>Examples—</p> <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> 		
<p>3. Animals that may cause a nuisance or hazard</p> <p>Refer to Local Nuisance and Litter Control Act 2016</p>		

<p>4. Inappropriate use of vehicle</p> <p><i>To refrain from using a caravan or vehicle as a place of habitation.</i></p>	<p><i>A person is using a caravan or vehicle as a place of habitation in circumstances that—</i></p> <p>(a) <i>present a risk to the health or safety of an occupant; or</i></p> <p>(b) <i>cause a threat of damage to the environment; or</i></p> <p>(c) <i>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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(2) A reference in the table to an animal or animals includes birds and insects.

Section 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).

Section 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*.

Section 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).