



TATIARA DISTRICT COUNCIL

# ORDER MAKING POLICY

## **Table of Contents**

<u>Table of Contents</u> .....	2
1. Purpose .....	3
2. Policy .....	3
3. Principles .....	5
4. Process and Procedure .....	5
5. Review Rights .....	6
6. Non-Compliance with an Order.....	6
7. Responsibilities & Delegations.....	7
8. Review & Evaluation .....	7
9. Availability of the Policy .....	7
10. Record of Amendments .....	8
<u>Attachment 1</u> .....	9

Version:	05
Last revised date:	13 February 2024
Minutes reference:	Agenda Item 16.10 Res #2024/42
Next review date:	Council will endeavour to review this policy every 4 years
Applicable Legislation:	Local Government Act 1999, Part 2, Chapter 12
Related Policies:	
Related Procedures:	
Other relevant documentation:	Council By-laws

## 1. Purpose

- 1.1. The purpose of this policy is to state Council's position in regard 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 District from public hazards and nuisances.
- 1.2. 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. Council maintains an Order Making Policy in relation to the exercise of the Council's powers pursuant to Part 2 of Chapter 12 of the *Local Government Act 1999*, to promote the health, safety and well-being of the community. This Policy sets out the matters about which Orders will be made and the relevant principles, procedures and non-compliance actions that will be applied.

## 2. Policy

- 2.1. Section 259 of the *Local Government Act 1999* requires the Council to prepare and adopt a policy for the operation of Part 2 of Chapter 12 of the Act which deals with making Orders. The policy is subject to review and evaluation. This policy will apply to the circumstances listed in the Act as follows:
- 2.2. This Policy will apply to the matters set out in the *Local Government Act 1999* at Section 216, 218 and 254 which empowers the Council to order a person to do or refrain from doing a thing under certain circumstances. This Policy does not apply to other circumstances provided for in the *Local Government Act 1999* and other South Australian statutes, which specifically empower the Council to make orders or to take other enforcement action, when appropriate and as the need arises.
- 2.3. **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:

### **2.3.1 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.

### **2.3.2 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.

## **2.4 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.

## **2.5 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.

### **3. Principles**

3.1. The Council will apply the following principles in the exercise of its powers to make orders:

(a) In each situation in which the Council is considering making an order to require a person to act or to refrain from acting, within its powers to do so, the Council will investigate and consider (to the extent that is relevant and necessary) each or some or all of the following circumstances:

- The severity of the incident or circumstance.
- The hazard, or danger posed to the community.
- The risk to health and safety of the community.
- Detraction from the amenity of the locality.
- The number of occurrences of the activity or incident.
- The impact of any previous actions to deal with the activity or incident.
- The significance of the breach, any other public interest or well-being considerations.
- The availability of a more appropriate response by the Council.
- Would an informal warning letter be sufficient?
- 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).

(b) To this end, Council will apply the principles of social justice, ecological sustainability, an accountable and transparent process and a high level of customer service when undertaking to resolve an order making issue in relation to this Policy.

### **4. Process and Procedure**

4.1. Before making an Order, unless the circumstances are urgent, the Council (including delegated officers) will take the following actions:

4.1.1. Give the person to whom an order under Section 255 of the Act is intended to be directed a notice in writing stating the –

- a. Proposed action.
- b. Terms of the proposed order.
- c. Period within which compliance with the order would be required.
- d. Penalties for non-compliance.
- e. Reasons for the proposed order; and

4.1.2. Invite the person notified to give reasons, within a specified time, as to why the proposed action should not be taken.

4.2. The Council will take reasonable steps, within available resources, to resolve cases of local nuisance 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.

- 4.3. Council may obtain (independent) expert evidence in determining whether to issue an order.
- 4.4. Where notice of a proposed Order has been given to a person who is not the owner of the relevant land, the Council will take reasonable steps to serve a copy of the notice on the owner of the land.
- 4.5. 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 a modification of the original proposal or determine not to proceed with making an Order.
- 4.6. The Order will provide for an appropriate time period in which the required action is to be taken.
- 4.7. An Order will be served by the Council on the person to whom it is addressed. The Council will take reasonable steps to serve a copy of the Order on the owner of the land.
- 4.8. The Council may vary any Order or revoke any Order as it considers fit.
- 4.9. If an emergency arises concerning a matter to which this Policy applies, the Council will take reasonable and appropriate action to deal with that emergency, as soon as practicable.
- 4.10. The Council will issue a separate Order in respect of each matter about which an Order is made.
- 4.11. 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.

## **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 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.

## **6. Non-Compliance with an Order**

- 6.1. 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.
- 6.2. Where 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 the requirements. the Council intends to take action, the

Council will notify the person to whom the Order is directed of the time and date on which the Council intends to do the action.

- 6.3. 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.
- 6.4. 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.
- 6.5. 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.
- 6.6. 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.
- 6.7. 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.

## **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 Act.

## **8. Review & Evaluation**

- 8.1. The effectiveness of this Policy will be reviewed and evaluated on a bi-annual basis. The Chief Executive Officer of the Council will report to the Council on the outcome of the evaluation and make recommendations for amendment, alteration or a substitution of a new policy.

## **9. Availability of the Policy**

- 9.1. This Policy will be available for inspection at the Council's office at Bordertown and Keith during ordinary business hours. Copies will also be provided to interested members of the community upon request, and upon such payment of such fee (if any) as the Council may, in its discretion, fix.

## 10. Record of Amendments

DATE	REVISION NO	REASON FOR AMENDMENT
10th April 2001	Rev: 00	Original Issue of Policy adopted by Council (Council Res No 240 – Development Committee).
9th March 2004	Rev: 01	Bi annual Review – addition of 5.10 right to appeal to District Court.
14th March 2006	Rev: 02	Policy reviewed.
8 <sup>th</sup> September 2009	Rev: 03	Policy reviewed and adopted.
1 <sup>st</sup> April 2014	Rev: 04	Policy reviewed and adopted: <ul style="list-style-type: none"> <li>• Inclusion of Attachment 1</li> <li>• Extra considerations under Guiding Principles</li> <li>• Addition of Appeal Rights clause</li> <li>• Addition of Responsibilities &amp; Delegations clause</li> <li>• Increased penalties as outlined in Act</li> </ul>
13 <sup>th</sup> August 2019	Rev:5	Policy reviewed and amendments adopted.
13 February 2024	Rev: 06	Policy reviewed and amendments adopted.



## **Attachment 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.

<b>Column 1 To do or to refrain from doing what?</b>	<b>Column 2 In what circumstances?</b>	<b>Column 3 To whom?</b>
<b>1. Hazards on lands adjoining a public place</b>		
(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.

<b>Column 1</b> <b>To do or to refrain</b> <b>from doing what?</b>	<b>Column 2</b> <b>In what</b> <b>circumstances?</b>	<b>Column 3</b> <b>To whom?</b>
<ul style="list-style-type: none"> <li>To construct a retaining wall or to remove or modify a fence.</li> <li>To fence land to prevent the escape of animals.</li> <li>To remove a structure or vegetation near an intersection.</li> </ul>	<p><del>(3) Keeping bees in close proximity to other property.</del></p> <p><del>(4) Keeping animals so as to generate excessive noise, dust or odours, or to attract pests or vermin.</del></p>	

## **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—	The owner or occupier of the land or a person apparently occupying the caravan or vehicle.
	<ul style="list-style-type: none"> <li>(a) present a risk to the health or safety of an occupant; or</li> <li>(b) cause a threat of damage to the environment; or</li> <li>(c) detract significantly from the amenity of the locality.</li> </ul>	

(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).