



# Order Making Policy

<b>Reference Number:</b>	2.8
<b>Type:</b>	Council Policy
<b>Category:</b>	Corporate Governance & Finance
<b>Relevant Community Plan Outcome:</b>	<ul style="list-style-type: none"><li>• Our values, leadership and collaborative approach are bold and courageous and enables us to deliver value for our Community and create a leading liveable City</li><li>• Open and accountable governance</li></ul>
<b>Responsible Officer(s):</b>	Manager Public Health & Safety
<b>First Issued/Approved:</b>	January 2001
<b>Minutes Reference:</b>	CoS 3/10/2023, Item 4.44
<b>Last Reviewed:</b>	October 2023
<b>Next Review Due:</b>	October 2025
<b>Applicable Legislation:</b>	Local Government Act 1999 Local Nuisance and Litter Control Act 2016
<b>Related Policies:</b>	Expiation Notice Review Policy Internal Review of Council Decisions Policy Enforcement Policy
<b>Related Procedures:</b>	Not applicable

## 1. Purpose

The City of Charles Sturt is committed to using the order making powers available to it under the Local Government Act 1999 in such a way as to facilitate a safe and healthy environment, and to improve the amenity of the locality, and generally for the good governance of its area.

## 2. Scope

This Policy sets out the principles and processes Council and any Council officers acting under delegated authority will consider in the making of orders.

### Local Government Act 1999 ("the Act")

Section 259 of the Act requires 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 of the Act 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.

This Policy will also apply to the making of any orders under Section 216 (Power to Order Owner of Private Road to Carry out Specified Roadworks) 217 (Power to Order Owner of Infrastructure Installed

on Road to Carry out Specified Maintenance or Repair Work) and 218 (Power to require owner of adjoining land to carry out specific work) of the Act.

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. Policy Statement**

When considering making an order within the scope of this Policy, Council or its delegated officers will consider the following principles, in addition to Council's Enforcement Policy, which are considered central to effective and timely resolution of local nuisances on private land.

#### **Principles**

- 3.1 Every reasonable effort will be made to resolve the matter by negotiation prior to instigating the order making process.
- 3.2 Each case for the possible use of the order making powers will be assessed on its individual merits. Factors that will be considered include:
  - Severity or seriousness of the incident
  - Extent of hazard/danger posed to the community
  - Nature and level of risk to health/safety of the community
  - Extent of detracting from the amenity of the locality
  - Impact on the environment
  - Occurrence of the activity/incident eg frequency, duration.
  - Impact of any previous actions to overcome the problem
  - Any public interest issues
  - The evidence available
  - Implications of not taking any action
  - Procedural fairness and natural justice.

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

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.

If this approach is not effective, a letter detailing the complaint, the required action to resolve the matter and stipulating a reasonable timeframe, will generally be sent to the occupier of the land.

In situations where the matter is assessed by the appropriate staff member 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.

If a letter still does not result in a satisfactory outcome the formal order making process may be instigated. This will include a notice of intention to issue an order detailing the information required by Section 255 of the Act, including:

- 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 is required;
- Reasons for the proposed action;
- Penalties for non-compliance; and
- Inviting the person notified of the opportunity to give reason/s in writing to Council within a specified time, why the proposed order should not be given.

Where protracted informal negotiations have failed to achieve the desired outcome, the first letter from Council may be the formal notice of intention to issue an order.

Where the order is intended to direct a person, who is not the owner of the land to take certain action, reasonable steps will be taken to serve a copy of any notices or orders on the owner of the land.

Where representations are received about a proposed order, the delegated officer may:

- Make the order on the terms of the original proposed order;
- Make an order with the modifications from the terms of the original proposed order (and not give further notice before making the modified order); or
- Determine not to proceed with making the order.

In cases where the delegated officer considers the circumstances or activity constitutes or is likely to constitute:

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

and that immediate action is required, the order and required compliance may be imposed without undertaking the above notification process.

## **5. 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.

## **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.

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 penalties where non-compliance with an order is issued under the Act.

## **7. Responsibilities and Delegations**

This Policy will be implemented by relevant staff operating under Council's delegated authority and be enforced by authorised officers appointed by Council.

## **8. Definitions**

Nil