



Order Making Policy



“Working with our Rural & Coastal Communities”



GOV-POL-07 – ORDER MAKING

Version No:	1.1
Issued:	November 2023
Next Review:	October 2025

Responsible Department:	Corporate Services
Policy Adopted:	15/11/2023
Minutes Reference:	OCM/23/133
Applicable Legislation:	<i>Local Government Act 1999</i>
Related Policies / Procedures/Codes:	Public Consultation Policy Code of Conduct – Employees <i>ANI-POL-01 – Keeping of Animals</i>
Review Frequency:	24 Months

1. INTRODUCTION

The Lower Eyre 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.

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

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.

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 A**).

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) . This policy will also apply to section 217 (power to order owner of infrastructure on road to carry out specified maintenance or repair work).

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. SPECIFIED INFRINGEMENTS

The specified infringements (refer Attachment A) are summarised with the examples detailed below. These examples are not intended to be an exhaustive list of the circumstances in which the Policy will apply. 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.

3.1 *Unightly condition of property.*

Examples of such circumstances may include:

- The storage or keeping, in a visually obtrusive location, of building materials, disused car bodies, machinery or other articles;
- A partially completed or partially demolished building or structure that has been in that state for more than 6 months and is visually obtrusive.

3.2 *Hazards on lands adjoining a public place.*

Examples of such circumstances may include:

- A fence, hedge or hoarding which is over one metre in height and within 6 metres of the corner of an intersection;
- A dangerous fence such as barbed wire which adjoins any road, community land or public place;
- Overhanging branches without a 2.7m clearance over a footpath and overgrown vegetation or materials or structures on land adjoining a public place, which obstructs either the footpath or roadway;
- Stormwater from a property which flows across the footpath or road or where a stormwater disposal system is not approved by Council;
- A fence which is designed to prevent the escape of animals;
- A flag, banner, flagpole or sign intruding into a public place.

3.3 *Animals that may cause a nuisance or hazard (includes birds and insects).*

Examples of such circumstances may include:

- Slaughtering of animals in an urban situation;
- Keeping an excessive number of insects, birds or other animals;
Keeping of bees not in accordance with Council policy, or where the keeping of bees may create a nuisance or danger to persons;
- Keeping animals which generate excessive noise, dust or odour or attract pests or vermin;
- Keeping an aggressive animal or keeping an animal in a situation where it cannot be adequately contained or may cause danger to the public;
- Failing to dispose of a European Wasp nest or to allow Council's contractors entry to do so;
- Keeping of poultry in townships not in accordance with Council policy, or where the keeping of poultry may create a nuisance or danger to persons;
- Failure to bury or otherwise lawfully dispose of any dead animal or bird.

3. SPECIFIED INFRINGEMENTS

cont'd:

3.4 *Inappropriate use of a vehicle.*

Examples of such circumstances may include:

- Use of a caravan or vehicle for habitation which presents a risk to the health and safety of an occupant;
- Use of the vehicle for habitation causes a threat of damage to the environment;
- Use of the vehicle for habitation detracts significantly from the amenity of the locality.

4. GUIDING PRINCIPLES

When considering making an order within the scope of this policy the Lower Eyre Council will consider the following principles, which are considered central to the effective resolution of local nuisances on private land:

4.1 Each case for the possible use of the order making powers will be considered on its merits. 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?
- 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).

Each situation will be assessed on its merits. This assessment will include a thorough inspection of the properties by an appropriately qualified and experienced person who will make a determination of the likelihood of the threat to life or property. Where that person determines that there is no evidence of a threat to life or property and no likelihood of it occurring, then Council will not make an order for the owner or occupier to complete any work on the vegetation.

Persons may also apply to the Magistrates Court to have a dispute between neighbours determined. Section 3(1) of the Magistrates Court Act 1991 defines “neighbourhood dispute” as “A dispute between neighbours, or the occupiers of properties in close proximity, based on allegations of trespass or nuisance.”



GOV-POL-07 – ORDER MAKING

Version No:	1.1
Issued:	November 2023
Next Review:	October 2025

5. PROCESS AND PROCEDURE

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.

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:

- 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
- Inviting the person notified of the opportunity to give reason/s, within a specified time, why the proposed action should not be taken.

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.

6. 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.



GOV-POL-07 – ORDER MAKING

Version No:	1.1
Issued:	November 2023
Next Review:	October 2025

7. 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 a maximum penalty of \$2,500 and an expiation fee of \$210 for failure to comply with an order issued under the Act.

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.

8. RESPONSIBILITIES AND DELEGATIONS

This policy will be enforced by Authorised Persons who have been appointed (in writing) by the Council under section 260 of the Act¹.

The authority to issue orders in accordance with Section 254, 216, 217 and 218 of the Local Government Act 1999 is delegated to the Chief Executive Officer who may sub-delegate such authority to appropriate officers of the Council.

In the event that the exercise of this delegated authority is to proceed to legal action as a result of non-compliance with the order, the matter will be referred to Council to determine if legal action is to proceed.

¹ Authorised Persons have powers under section 261 of the Act to enforce breach of orders by way of expiation.



GOV-POL-07 – ORDER MAKING

Version No:	1.1
Issued:	November 2023
Next Review:	October 2025

9. REVIEW AND EVALUATION

The effectiveness of the policy will be reviewed and evaluated following Council Elections.

The Chief Executive Officer will report to Council on the outcome of the evaluation, and make recommendations for amendment, alteration or substitution of a new Policy.

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.

10. AVAILABILITY OF THE POLICY

This policy will be available for inspection at Council's principal office during ordinary business hours and published on the Council's website www.lowereyrepeninsula.sa.gov.au. Copies will be provided to interested parties upon request in accordance with Council's schedule of fees and charges.

DOCUMENT HISTORY		
Version:	Issue Date:	Description of Change:
1.1	15/11/2023	Amendments made to align policy with reviews made to the LGA Act.

ATTACHMENT A

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		
To take action considered by the council to be necessary to ameliorate an unsightly condition.	Land, or a structure or object on land, is unsightly and detracts significantly from the amenity of the locality in which the land is situated.	The owner or occupier of the land.
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—		
<ul style="list-style-type: none"> · 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. 		
3. Animals that may cause a nuisance or hazard		
To do or to refrain from doing the thing specified in the order in order to abate a nuisance or a hazard to health or safety	A person is keeping or dealing with (or failing to deal with) an animal or animals (whether the animal or animals are alive or dead) so as to cause, or to be likely to cause, promoting or associated with a live or dead animal or animals, or otherwise A person is the owner or occupier of land where an animal or animals are located	The owner or occupier of land or any person apparently engaged in a nuisance or a hazard to health or safety, conducting an activity.

ATTACHMENT A

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
	<p>which may cause, or be likely to cause, a nuisance or a hazard to health or safety, or otherwise to become a pest.</p> <p>Examples—</p> <p>(1) The slaughtering of animals in a town or urban situation.</p> <p>(2) Keeping an excessive number of insects, birds or other animals.</p> <p>(3) Keeping bees in close proximity to other property.</p> <p>(4) Keeping animals so as to generate excessive noise, dust or odours, or to attract pests or vermin.</p> <p>(5) Keeping an aggressive animal, or keeping an animal in a situation where it cannot be adequately contained or may cause danger to the public.</p> <p>(6) Failing to deal with a wasp's nest</p>	
<p>4. Inappropriate use of vehicle</p>	<p>A person is using a caravan or vehicle as a place of habitation in circumstances that—</p> <p>(a) present a risk to the health or safety of an occupant; or</p> <p>(b) cause a threat of damage to the environment; or</p> <p>(c) detract significantly from the amenity of the locality.</p> <p>(2) A reference in the table to an animal or animals includes birds and insects.</p>	<p>The owner or occupier of the land or a person apparently occupying the caravan or vehicle.</p>
<p>216—Power to order owner of private road to carry out specified roadwork</p>	<p>(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.</p> <p>(2) Divisions 2 and 3 of Part 2 of Chapter 12 apply with respect to—</p> <p>(a) any proposal to make an order; and</p> <p>(b) if an order is made, any order,</p> <p>under subsection (1).</p>	
<p>217—Power to order owner of infrastructure on road to carry out specified maintenance or repair work</p>	<p>(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—</p> <p>(a) to carry out specified work by way of maintenance or repair; or</p> <p>(b) to move the structure or equipment in order to allow the council to carry out roadwork.</p> <p>(2) If the order is not complied with within a reasonable time fixed in the order—</p> <p>(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</p> <p>(b) the owner is guilty of an offence and liable to a penalty not exceeding \$5 000.</p> <p>(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.</p>	

ATTACHMENT A

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).