

Introduction

The Southern Mallee District 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, and generally for the good governance of the Southern Mallee District Council.

Council's Order Making Policy sets out the steps Council will take in the making of orders.

Scope

Section 259 of the Local Government Act 1999 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 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).

In addition to compliance with Section 254 this policy will apply to orders issued pursuant to Section 299 (vegetation clearance), Section 216 (power to order owner of private road to carry out specified road-work), Section 217 (power to order owner of infrastructure installed on road to carry out specified maintenance or repair work) and Section 218 (power to require owner of adjoining land to carry out specified 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 will be dealt with in accordance with the procedures set out in that Act.

Guiding Principles

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

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

Factors 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 (eg 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)

In the case of vegetation clearance orders made under Section 299 of the Act Council will adopt the following consideration to assist in determining what circumstances might effectively be a private dispute between neighbours:

- Have the parties exhausted all other reasonable steps (including civil action)
- Does the vegetation pose an immediate and/or serious threat to health and safety
- The apportionment of costs of complying with the order

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 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 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 circumstances 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.

Review Rights

Pursuant to Section 256 any person to whom an order is issued (including an order issued under Sections 254, 216, 218 or 299 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.

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 the 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 and an expiation fee 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 as set out in this Section.

Responsibilities and Delegations

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

Council may also choose to delegate the power to issue orders under Section 254, 216, 218 and 299 of the Act to Council staff, in which case, Council will ensure appropriate delegations are in place.

Council Endorsement of the Policy

The Inaugural Policy was endorsed by Council on the 8th February 2012. Council endorsed the Policy following public consultation on its Draft Policy. Written submissions commenting on the Draft Policy were invited within 28 days of a notice appearing in The Border Times and The Murray Valley Standard. Submissions received were considered and taken into account in preparing this 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.

As there is no major amendments or alterations and is unlikely to attract any community interest, Council determines that Public Consultation process under Section 259 (2) it not required.

Further Information

Members of the public may inspect this Policy on Council's website www.southernmallee.sa.gov.au and at the principal office of the Southern Mallee District Council at Day Street, Pinnaroo SA 5304.

On payment of a fee, a copy of this Policy may be obtained from the Council, or otherwise may be downloaded for free from the Council's website.

Any queries in relation to this Policy should be directed to the Chief Executive Officer contactable at the principal office on 8577 8002.

Policy Review

This policy will be within two years or as required by Council.

The Council may at any time alter this policy, or substitute a new policy.

Other Relevant Policies/Procedures

Internal Control Policy

Internal Control Procedure

Procurement Policy

Risk Management Policy

Policy name and version no.	Order Making Policy Version 2
Last update	January 2018
Last Council review (resolution number)	05 / 0118
Next review date	January 2020
Responsibility	Manager Building and Regulatory Services