



Order Making Policy

Classification	Policy
Strategic reference	Goal 4 : Governance & Organisational Culture
Relevant legislation	<i>Local Government Act 1999</i> <i>Local Nuisance and Litter Control Act 2016</i>
Relevant documents	Nil
Responsible officer	Chief Executive Officer
Version	2.0
Date adopted	15 November 2023
Date of effect	20 November 2023
Next review date	November 2027

1. STATEMENT

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 of a locality, and generally for the good governance of its area.

An order is a formal, written directive issued by Council to a person requiring specified actions to be taken or ceased. Council is required to prepare and issue relevant orders in accordance with legislation. This *Order Making Policy* (the “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. PRINCIPLES

2.1 Scope

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 which state that Council may order a person to do or refrain from doing a thing under certain circumstances.

In addition to compliance with Section 254 this Policy will apply to orders issued by Council under section 216 (power to order owner of private road to carry out specified roadworks), Section 217 (power to order owner of infrastructure 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.

2.2 Guiding Principles

When considering making an order within the scope of this policy, 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 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 offenders attitude
- Number of complaints received in respect of the matter (if any)

3. 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 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

3.1 Review rights

Pursuant to section 256 any person to whom an order is issued (including an order issued under sections 254, 216, 217 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.

3.2 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.

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 in accordance with the Act

4. 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, 217 and 218 of the Act to staff, in which case, Council will ensure appropriate delegations are in place.

5. REVIEW

This Policy will be reviewed within 12 months after the conclusion of each periodic election or more frequently if legislation or Council requires.

6. AVAILABILITY

This Policy is available without charge on the Southern Mallee District Council website: www.southernmallee.sa.gov.au.

A copy of the Policy may also be purchased from the Council Office at Lameroo or Pinnaroo, upon payment of a prescribed fee in accordance with Council's Schedule of Fees and Charges.

7. ADOPTION & AMENDMENT HISTORY

The table below sets out the adoption, review and amendment history of the Code.

Version No:	Issue Date:	Authorised by:	Description of Change:	Minutes Reference:
1.0	March 2020	Council	Adopted	Ordinary Council -18 March 2020
2.0	November 2023	Council	Minor reformatting of document. Reviewed and adopted.	Ordinary Council -15 November 2023