



## POLICY DOCUMENT

## 5.63.1

<b>Policy Name</b>	<b>ORDER MAKING</b>
<b>Policy No.</b>	5.63.1
<b>Version:</b>	2
<b>Strategic Reference:</b>	Goal 3: Governance and Leadership
<b>Responsible Department:</b>	Infrastructure & Regulatory Services
<b>Policy Adopted:</b>	19 February 2024
<b>Last revised date:</b>	21 October 2019
<b>Minute reference:</b>	CO 24/012
<b>Next review date:</b>	Council will review this policy 4 years after adopted date or following significant change to legislation or aspects included within this policy.
<b>Applicable Legislation:</b>	Local Government Act 1999 Local Nuisance and Litter Control Act 2016
<b>Related Policies</b>	Council Enforcement Policy 3.63.8 Public Consultation & Community Engagement Policy 2.63.1

### 1. **PURPOSE**

The City of Port Lincoln 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, 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 *Local Government Act 1999* ("the Act") and sets out the processes to be considered by Council and any Council officers acting under delegated authority when making orders under the Act.

### 2. **SCOPE**

Section 259 of the Act requires each Council to take reasonable steps to prepare and adopt policies concerning its operations, in particular relevance to this Policy Chapter 12, Part 2 of the Act , which deals with the making of orders.

This Policy will apply to those circumstances listed in Section 254 arise, that a person has undertaken an action, or failed to act, in such a way that their action or aspects of their property, are considered to be causing a hazard to the public. Council may order a person to do, or refrain from doing, an action or allowing a hazardous situation to affect the safety or amenity of the public, under certain circumstances, as specified in the table included within that Section 254 of the Act.

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 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.

### **3. GUIDING PRINCIPLES**

When considering making an order within the scope of this policy the City of Port Lincoln will consider the following principles, which are considered central to the effective resolution of local nuisances on private land.

Reasonable effort will be made to resolve the matter by negotiation prior to instigating the order making process. 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 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).

### **4. 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 formally issuing an order.

Before making an order Council will give notice of its intention to make an order in accordance with section 255 of the Act by:

1. Giving the person to whom an order is intended to be directed a notice in writing stating the:
  - a) proposed action
  - b) terms of the proposed order (i.e. what it requires the person to do or refrain from doing)
  - c) period within which compliance with the order will be required
  - d) penalties for non-compliance; and
  - e) reasons for the proposed action.
2. 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.

## 5. **REVIEW RIGHTS**

Pursuant to section 256 any person to whom an order is issued (including an order issued under sections 254, 216, 217, 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 made by 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, as at the date of this Policy.

Where an order is issued under section 217 of the Act, 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 \$5,000.00

## 7. **RESPONSIBILITIES**

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

Council may also choose to delegate the power to issue orders under Sections 254, 216, 217, 218 of the Act to Council staff, in which case, Council will ensure appropriate delegations are in place.

## 8. **COUNCIL ENDORSEMENT OF THE POLICY**

Council follows the requirements of its policy 2.63.1 *Community Engagement* in relation to public consultation on 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

**9. RELEVANT DELEGATED POWERS AND DUTIES**

Any actions or decisions made regarding this policy, will be enacted upon as per Council's current Delegations Register.