

	<p style="text-align: center;">GOVERNANCE POLICY</p> <p style="text-align: center;">ORDER MAKING</p>	Policy Number Version Number Issued Last Review Next Review GDS	G1.11 5 July 2012 October 2023 November 2027 9.63.1.1
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ORDER MAKING

1. Introduction

The Flinders Ranges Council (the Council) 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 steps Council will take in the making of orders.

2. Scope

Section 259 of the Act requires the 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 the 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 **Appendix 1**).

In accordance with the requirements of the Act, this Policy also applies in respect of orders issued by the Council under Section 216 (power to order the owner of private road to carry out specified road works), Section 218 (power to require owner of adjoining land to carry out specified work) and Section 299 (vegetation clearance)

Local nuisances (other than those found in the *Local Government Act 1999*) 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. Guiding Principles

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

In each situation in which the Council is considering making an order to require a person to act or to refrain from acting, within its powers to do so, the Council will investigate and consider (to the extent that is relevant and necessary) the following circumstances:

- the severity of the incident;
- the hazard or danger posed to the community;
- the risk to health and safety of the community;
- detraction from the amenity of the locality;
- the number of occurrences of the activity or incident (e.g. duration, previous offences);
- the impact of any previous actions to deal with the activity or incident;
- the significance of the breach, any other public interest or well-being considerations;
- would a formal 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 (if any) in respect of the matter.

	<p style="text-align: center;">GOVERNANCE POLICY</p> <p style="text-align: center;">ORDER MAKING</p>	Policy Number Version Number Issued Last Review Next Review GDS	G1.11 5 July 2012 October 2023 November 2027 9.63.1.1
--	--	--	--

In the case of vegetation clearance orders made under section 299 of the Act, the Council has adopted specific considerations to assist in determining what circumstances might effectively be a private dispute between neighbours. The Council will investigate and consider (to the extent that is relevant and necessary) the following circumstances:

- have the parties exhausted all other reasonable steps (including civil action);
- does the vegetation pose an immediate and/or threat to health and safety;
- the apportionment of costs of complying with the order.

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 issuing an order. This may include a personal approach by Council officers and/or an informal warning letter prior to commencing the formal order making process.

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;
- reasons for the proposed action;
- 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, 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.

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.



GOVERNANCE POLICY

ORDER MAKING

Policy Number
Version Number
Issued
Last Review
Next Review
GDS

G1.11
5
July 2012
October 2023
November 2027
9.63.1.1

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 the applicable maximum penalty and expiation fee for failure to comply with an order issued under the Act.

7. 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 Act.

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

8. Review

To be reviewed within 12 months after a General Election, in line with legislation and any legislative changes or by resolution of Council.

9. Availability of the Order Making 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.frc.sa.gov.au

Adopted by Council 14 August 2012
Resolution 164/2012

Review Date	Version Number	Change	Resolution
13 August 2013	1	Nil	180/2013
30 June 2015	2	6. fees deleted, replaced with a 'applicable' 8. (former) 'Council Endorsement of the Policy – deleted 8. Review – standard policy wording (Reviewed by Policy Review Reference Committee – Minutes endorsed by Council; public consultation process approved 21 July 2015)	229/2015
19 September 2017	3	2 amended to include <i>Local Nuisance and Litter Control Act 2016</i> reference; 3 amended to include "public interest"; Appendix 1 Unsightly conditions and Animals amended to refer to <i>Local Nuisance and Litter Control Act 2016</i>	157/2017
15 June 2021	4	Minor formatting and grammatical changes only.	132/2021
17 October 2023	5	Policy Committee Review – no changes made	283/2023

	<p style="text-align: center;">GOVERNANCE POLICY</p> <p style="text-align: center;">ORDER MAKING</p>	Policy Number Version Number Issued Last Review Next Review GDS	G1.11 5 July 2012 October 2023 November 2027 9.63.1.1
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Appendix 1

Matters To Which Policy Applies

The matters to which this Policy applies are set out below. The matters are stated in general terms with particular examples for illustration. 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.

Local Government Act 1999

Section 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.
- (2) A reference in the table to an animal or animals includes birds and insects.

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
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—

- ‘ 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.



GOVERNANCE POLICY

ORDER MAKING

Policy Number
Version Number
Issued
Last Review
Next Review
GDS

G1.11
5
July 2012
October 2023
November 2027
9.63.1.1

Column 1

Column 2

Column 3

To do or to refrain from doing what?

In what circumstances?

To whom?

4. Inappropriate use of vehicle

To refrain from using a caravan or vehicle as a place of habitation.

A person is using a caravan or vehicle as a place of habitation in circumstances that—

- (a) present a risk to the health or safety of an occupant; or
- (b) cause a threat of damage to the environment; or
- (c) detract significantly from the amenity of the locality.

The owner or occupier of the land or a person apparently occupying the caravan or vehicle.

Section 216 - Power to order owner of private road to carry out specified roadwork

- (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.
- (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).

Section 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).