

# Order Making Policy

As required by section 259 of the Act

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## 1. Purpose

- 1.1. The purpose of this policy is to comply with Council's legislative requirements,<sup>1</sup> and outline Council's approach to the making of orders to protect the community from public hazards and nuisances.

## 2. Scope

- 2.1. This policy applies to Council Members, the CEO and all employees sub-delegated power to act on behalf of Council, in the exercise of their powers to order a person to do or refrain from doing a thing specified in **Attachment 1**.<sup>2</sup>
- 2.2. This policy does not apply to other Council processes or matters outside Council's jurisdiction, the community will be redirected where applicable.<sup>3</sup>

## 3. Definitions

- 3.1. **Act** means the *Local Government Act 1999*;
- 3.2. **authorised person** means a person appointed by Council (as an authorised person) under the Act;<sup>4</sup>
- 3.3. **CEO** means Chief Executive Officer of Council;
- 3.4. **community** means any person who lives, works, pays rates, conducts private or government business, visits, utilises services, facilities and public space within the Council area (may also be referred to as a stakeholder);
- 3.5. **Council** means Adelaide Plains Council;
- 3.6. **Council Member** means a member of Council elected in accordance with the Act;
- 3.7. **employee** means any person carrying out duties or performing tasks for and on behalf of Council, whether they are paid or unpaid, including staff, contractors, consultants, trainees, volunteers, students and any other person who has access to Council's electronic systems and services in a full-time, part-time or casual capacity;
- 3.8. **emergency situation** means an urgent, unexpected and usually dangerous situation that poses an immediate risk to health, life, property or environment and requires immediate action;
- 3.9. **review of decision** means a process in which Council can reconsider/review the decision-making process and all the evidence relied on to make a decision, including new evidence if relevant;

## 4. Council's Core Values

Our approach to the making of orders is underpinned by Council's core values:

 <b>Honesty and Integrity</b>	 <b>Innovative and Open-minded</b>	 <b>Leadership and Diplomacy</b>	 <b>Professionalism</b>	 <b>Respect</b>	 <b>Teamwork</b>
Building trust and loyalty with the community and within Council.	Being proactive in continually improving our services.	By acting strategically and effectively managing our relationships.	Through commitment, quality and timeliness of work delivered.	For others, acting with humility and empathy.	Through unity, cooperation and support.

<sup>1</sup> Section 259 of the Act.

<sup>2</sup> For clarity, employees sub-delegated powers under section 216, 218, 254 and 260 of the Act.

<sup>3</sup> For example, nuisances that are contained in the *Local Nuisance and Litter Control Act 2016* will fall within the jurisdiction of the same.

<sup>4</sup> Chapter 12 Part 3 of the Act.

## 5. Key Considerations

- 5.1. Council will deal with each particular case on its merits and consider the following before making an order under this policy:<sup>5</sup>
- (a) Severity/frequency of the incident;
  - (b) Nature of the hazard/danger posed to the community;
  - (c) Risk to health and/or safety to the community;
  - (d) Detraction or impact to the local amenity;
  - (e) Previous attempts to reconcile;
  - (f) Impact of any previous actions to overcome the matter;
  - (g) Extent of the breach;
  - (h) Public interest;
  - (i) The availability of sufficient evidence which Council may rely on to exercise its powers;
  - (j) The alleged offender's willingness to resolve the matter;
  - (k) The number of complaints received in respect of the matter (if any);
  - (l) The likelihood/availability of other mechanisms (informal/formal) to effectively resolve them matter.<sup>6</sup>

## 6. Notice of intention to make order<sup>7</sup>

- 6.1. Council will, before making an order (as per **Attachment 1**):
- 6.1.1. Provide the person to whom the order is intended to be directed, a notice (in writing) stating:
- (a) The proposed action Council intends to take;
  - (b) The terms of the proposed order (what it requires the person to do/refrain from doing);
  - (c) Period of which compliance with the order is required;
  - (d) Penalties for non-compliance;
  - (e) Reasons for proposed action.
- 6.2. Council will give the person notified the opportunity to respond/give reasons (within a specified time limit, of a reasonable period) as to why the proposed action should not be taken.

## 7. Exceptions to notice of intention<sup>8</sup>

- 7.1. Council will make an order without negotiation or notice, where Council considers the circumstances constitute, or is likely to constitute:
- (a) A threat to life;
  - (b) An immediate threat to public health and/or safety; or
  - (c) An emergency situation.

## 8. Review of decision to make order

- 8.1. Any person to whom an order is issued, has the right to appeal against that order.<sup>9</sup> Such appeal must be:
- (a) In writing;
  - (b) Addressed to the chief executive officer; and
  - (c) Received within 14 days of that person's receipt of the order.
- 8.2. Council will include a statement setting out the rights of a person to seek a review of an order made under this policy.<sup>10</sup> A person may seek review of an order by:

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<sup>5</sup> Under section 254 of the Act.

<sup>6</sup> Both legislative and non-legislative mechanism may be available.

<sup>7</sup> See section 255 of the Act.

<sup>8</sup> Section 255(12) of the Act.

<sup>9</sup> Any order under section 216, 218, 254 or 299 of the Act.

<sup>10</sup> Section 256(1) of the Act.

- (a) Internal Review of Decision;<sup>11</sup>
- (b) South Australian Civil & Administrative Tribunal “SACAT”;<sup>12</sup>
- (c) Ombudsman;
- (d) Minister for Local Government; and
- (e) Any other related body.

See Council’s ***Community Requests, Complaints & Feedback Policy*** and ***Internal Review of Decision Procedure*** for more information.

## 9. Consequence of non-compliance

- 9.1. Non-compliance with an order made under the policy is an offence.<sup>13</sup>
- 9.2. Council may, in the instances an order has not been complied with within the specified timeframe, (subject to section 8 of this policy, and within 14 days after the determination of the review) take necessary action to address the matter as required by the order.<sup>14</sup>
- 9.3. All reasonable costs and expenses incurred by Council in taking action following non-compliance with an order may be recovered as a debt from the person who failed to comply.<sup>15</sup> This decision (as to costs and expenses) will be at Council’s discretion (whom will consider the cost and benefit to the community in recovering costs incurred).
- 9.4. Council may, by notice (in writing) specify a period, of no less than 28 days from the date of notice, in which the amount must be paid. If the amount is then not recovered within that time, Council may charge interest and impose a charge over the land for the unpaid amount.<sup>16</sup>

## 10. References

*Local Government Act 1999*

## 11. Records management

All documents relating to this policy will be registered in Council’s Record Management System and remain confidential where identified.

## 12. Document review

This policy will be reviewed in accordance with Council’s *Policy Review Schedule* to ensure legislative compliance and its continued relevance to Council’s needs, activities and programs.

## 13. Further information

<b>Public Access:</b>	Members of the public may inspect this policy (and any other related documents) free of charge at: Council’s website: <b><a href="http://www.apc.sa.gov.au">www.apc.sa.gov.au</a></b> ; or Council’s Principal Office: <b>2a Wasleys Rd, Mallala SA 5502.</b> <i>A copy of this policy may be obtained on payment of a fee.<sup>17</sup></i>
<b>Queries:</b>	Any queries in relation to this policy must be in writing to <a href="mailto:info@apc.sa.gov.au">info@apc.sa.gov.au</a> , marked: <i>Attention: Manager Governance</i>

<sup>11</sup> Under section 270 of the Act, see Council’s ***Community Requests, Complaints & Feedback Policy*** and ***Internal Review of Decision Procedure***.

<sup>12</sup> Under section 256(3) of the Act and section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*.

<sup>13</sup> Section 258 of the Act.

<sup>14</sup> See section 257(1) of the Act.

<sup>15</sup> Unless special circumstances exist.

<sup>16</sup> See section 257(5) of the Act.

<sup>17</sup> As outlined in Council’s Fees & Charges Schedule.