

Order Making Policy

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Responsible Officer	Group Manager Planning, Environment & Regulatory & Group Manager Assets & Infrastructure
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Related Policies	Nil.
Related Corporate Documents	Council's Fees and Charges Schedule
Associated Forms	
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Order Making Policy

1. Introduction	1
2. Scope	1
3. Definitions	1
4. Principles	1
5. Policy	2
6. Availability of Policy	5

Order Making Policy

1. Introduction

- 1.1. The Town of Walkerville is committed to using the order making powers available to it under the *Local Government Act 1999 (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.
- 1.2. Section 259 of the Act requires Council to have a policy concerning the operation of order making functions contained within the legislation. This Order Making Policy is prepared pursuant to section 259 of the Act and sets out the steps authorised officers will take when considering and issuing orders under the Act.

2. Scope

- 2.1 This Policy will apply to those circumstances listed in section 254 of the Act which states that Council may order a person to do or refrain from doing a thing under certain circumstances.
- 2.2 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) and section 218 (power to require owner of adjoining land to carry out specified work).

3. Definitions

Act	Means the <i>Local Government Act 1999 (SA)</i>
Authorised person	Means a person appointed by a Council as an authorised person in accordance with the Act.
Council	Is a comprehensive term and is to be read, as necessary, as encompassing officers, employees and Elected Members of the Town of Walkerville.
Notice	Means a written request to undertake action as specified.
Order	Means a formal direction that a person seek to do or refraining from doing a specific thing.
SACAT	Means the South Australian Civil and Administrative Tribunal

4. Principles

- 4.1 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 or circumstance
 - 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
 - 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, and
 - the availability of a more appropriate response by the Council.
- 4.2 To this end, Council will apply the principles of social justice and a high level of customer service when undertaking to resolve an order making issue in relation to this Policy.
- 4.3 In considering whether to make an Order Council must deal with each particular case on its merits.

5. Policy

5.1 Matters to Which the 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.

5.1.1 Power to order an owner of a private road to carry out specified roadwork: Section 216

The Council may make an Order directing the owner of a private road to carry out specific roadwork to repair or improve the road condition such as for safety reasons. For example, the owner of the road may be asked to repair pot holes or resurface a road if it has become unsafe for road users.

5.1.2 Power to require owner of adjoining land to carry out specified work: Section 218

The Council may make an Order to the owner of land adjoining a road requiring that they take action to construct, remove or repair a crossing place from the road to the land.

5.1.3 Hazards on Land Adjoining a Public Place: Section 254

The Council may make an Order directing the owner or occupier of land to take action to deal with hazards on lands adjoining a public place.

Examples of relevant circumstances include:

- a dangerous fence adjoining any road, community land or public place
- where there are overhanging branches, overgrown vegetation or structures on land adjoining a public place which obstruct streets
- where there is drainage of water across the road
- where a flag, banner, flagpole or sign intrudes into a public place.

5.14 Inappropriate use of a Vehicle: Section 254

The Council may make Orders directed to an owner or occupier of land or a person apparently occupying a caravan or vehicle which is used as a place of habitation.

Examples of relevant circumstances include:

- where use of a caravan or vehicle for habitation presents a risk to the health and safety of an occupant
- use of the vehicle as habitation causes a threat of damage to the environment
- use of the vehicle as habitation detracts significantly from the amenity of the locality

5.2 Actions to be Taken if the Matter is not Urgent

Before making an Order, unless the circumstances are urgent, the Council will take the following actions:

5.2.1 Give the person to whom an Order is intended to be directed a notice in writing stating the:

- proposed action
- terms of the proposed Order (what Council requires the person to do or refrain from doing)
- period within which compliance with the order would be required
- penalties for non-compliance
- reasons for the proposed Order.

Order Making Policy

- 5.2.2 The Council will invite the person notified to make representations to Council within 14 days, as to why the proposed action should not be taken.
- 5.2.3 Where notice of a proposed Order has been given to a person who is not the owner of the relevant land, the Council must take reasonable steps to serve a copy of the notice on the owner of the land.
- 5.2.4 After considering the representations made by the person to whom notice of the Order is directed, the Council may make an Order in terms of the original proposal or a modification of the original proposal or determine not to proceed with making an Order.
- 5.2.5 Where practical an Order will be served to the person to whom the Order is addressed by registered post to the last residential or business address of the person known by the Council.
- 5.2.6 If a notice of an Order, or an Order is to be served on a person as the owner of the land, the land is unoccupied and the identity or address of the owner is unknown to the Council the Order will be placed on a conspicuous part of land.
- 5.2.7 The Council may vary any Order or revoke any Order as it considers fit.
- 5.3 Emergency Circumstances
- 5.3.1 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.
- 5.4 Rights of Review
- 5.4.1 An order must include a statement setting out the rights of a person to seek a review of the Order under this Act.
- 5.4.2 A person to whom an order is directed may, within 14 days after service of the order, seek a review of the Order by SACAT under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*.
- 5.4.3 The operation of the Order is to continue pending the determination of an application for review unless SACAT, or the Council, makes an interim Order suspending the operation of the Order.

Order Making Policy

- 5.4.4 The SACAT may, on application for review, affirm, vary or set aside the Order.
- 5.4.5 An individual may, at any time, lodge a complaint with the South Australian Ombudsman via the Ombudsman SA website or by telephone (08) 8226 8699
- 5.5 Action on Non-Compliance with an Order
 - 5.5.1 The Council may, if the requirements of an Order are not complied with within the time specified in the Order, or within 14 days of the completion of any review, itself carry out the requirements of an Order.
 - 5.5.2 The reasonable costs and expenses of the Council in carrying out the requirements of an Order may be recovered by the Council from the person who failed to comply with the Order as a debt in accordance with Council's Schedule of Fees and Charges.
 - 5.5.3 Where an amount is recoverable from a person by the Council, the Council may give that person notice in writing to pay the amount within no less than 28 days from the date of the notice. If the person fails to pay the amount that person is liable to pay interest and, if the person is the owner of the land to which the Order relates, the Council may impose a charge on the land for the unpaid amount and interest, in accordance with section 257(5) of the Act.
- 5.6 Non-compliance with an Order of the Council
 - 5.6.1 Non-compliance with an Order of the Council will constitute a breach of the *Local Government Act 1999* and an offence for which a person may incur statutory penalties provided for in the *Local Government Act 1999*. The maximum penalty and expiation fee for non-compliance with an order is documented in section 258 of the Act.
 - 5.6.2 All Orders of the Council will include the specific statutory penalty relevant to non-compliance with that particular Order, and will advise of any applicable appeal rights.

6. Availability of Policy

- 6.1 This Policy will be available for inspection at Council's principal office during ordinary business hours and on Council's website www.walkerville.sa.gov.au
- 6.2 Copies will also be provided to interested members of the community upon request and payment of associated fees in accordance with Council's Schedule of Fees and Charges.