

DISTRICT COUNCIL OF KAROONDA EAST MURRAY

Order Making Policy

Policy No	12
Date of Policy Adoption	10/10/2000
Minute Reference	3830
Review Date	12/3/2013 p4578
Next Review	2015

Introduction

The District Council of Karoonda East Murray is committed to using the order making powers available under the *Local Government Act 1999* in such a way as to facilitate a safe and healthy environment, to improve the amenities 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.

Scope

Section 259 of the Act requires each 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 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 **Attachment 1**).

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

Guiding Principles

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

Powers to Make Orders

The Council has resolved to adopt an Order Making Policy in relation to the exercise of Council's powers pursuant to Part 2 of Chapter 12 of the Local Government Act 1999.

The Local Government Act 1999, requires the Council to prepare and adopt a policy on the operational means for its application and use of its powers to make orders to resolve cases of local nuisances and hazards where they arise and for other matters outlined in the Act.

The Order Making powers and processes under the Act are separate and distinct from Council's powers to make By-laws for the regulation of matters specified by the Act. The exercise of the Council's Order Making Powers, co-exist with Council's other regulatory powers such as its powers to make By-Laws under the Act.

Matters to which the Policy applies

This policy will apply to the matters set out in the Local Government Act at Section 254 and Section 299, which empower the Council to order a person to do or refrain from doing an activity under certain circumstances. The matters to which this policy applies are set out below. These matters are stated in general terms with particular examples for illustration only. The examples are not intended to be an exhaustive list of the circumstances to which this policy will apply, but rather to provide a guide for the community regarding the purpose and the intent of the policy and the way in which it will be applied.

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Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
<p>1. Unsightly condition of land</p> <p>To take action considered by the council to be necessary to ameliorate an unsightly condition.</p>	<p>Land, or a structure or object on land, is unsightly and detracts significantly from the amenity of the locality in which the land is situated.</p>	<p>The owner or occupier of the land.</p>
<p>2. Hazards on lands adjoining a public place</p> <p>(1) To fence, empty, drain fill or cover land (including land on which there is a building or other structure).</p> <p>(2) To remove overgrown vegetation, cut back overhanging branches, or to remove a tree.</p> <p>(3) To remove or modify a flag or banner, a flagpole or sign, or similar object or structure that intrudes into a public place.</p> <p>(4) Where the public place is a road-to take action necessary to protect the road or to remove a hazard to road users.</p> <p><i>Examples</i></p> <ul style="list-style-type: none"> - 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. - To prevent irrigation water spraying onto or inundating a road. 	<p>(1) A hazard exists that is, or is likely to become, a danger to the public.</p> <p>(2) The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place.</p> <p>(3) The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place.</p> <p>(4) A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.</p>	<p>(1) The owner or occupier of the land.</p> <p>(2) The owner or occupier of the land.</p> <p>(3) The owner or occupier of the land.</p> <p>(4) The owner or occupier of the land.</p>
<p>3. Animals that may cause a nuisance or hazard</p> <p>To do or to refrain from doing the thing specified in the order in order to abate a nuisance or a hazard to health or safety associated with a</p>	<p>A person is keeping or dealing with (or failing to deal with) an animal or animals (Whether the animal or animals are alive or</p>	<p>The owner or occupier of land or any person apparently engaged in promoting or conducting an</p>

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<p>live or dead animal or animals, or otherwise to deal with an animal or animals.</p>	<p>dead) so as to cause, or to be likely to cause, a nuisance or a hazard to health or safety.</p> <p>A person is the owner or occupier of land where an animal or animals are located which may cause, or be likely to cause, a nuisance or a hazard to health or safety, or otherwise to become a pest.</p> <p><i>Examples</i></p> <p>(1) the slaughtering of animals in a town or urban situation.</p> <p>(2) Keeping an excessive number of insects, birds or other animals.</p> <p>(3) Keeping bees in close proximity to other property.</p> <p>(4) Keeping animals so as to generate excessive noise, dust or odours, or to attract pests or vermin.</p> <p>(5) Keeping an aggressive animal, or keeping an animal in a situation where it cannot be adequately contained or may cause danger to the public.</p> <p>(6) Failing to deal with a wasp's nest.</p>	<p>activity.</p>
<p>4. Inappropriate use of vehicle</p> <p>To refrain from using a caravan or vehicle as a place of habitation.</p>	<p>A person is using a caravan or vehicle as a place of habitation in circumstances that-</p> <p>(a) present a risk to the health or safety of an occupant; or</p> <p>(b) cause a threat of damage to the environment; or</p> <p>(c) detract significantly from the amenity of the locality.</p>	<p>The owner or occupier of the land or a person apparently occupying the caravan or vehicle.</p>

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<p>5. Section 294</p> <p>To require vegetation encroaching on land to be cut back.</p>	<p>Vegetation is encroaching on adjoining land which creates a hazard to the adjoining landowner or adjoining building.</p>	<p>The owner of the land.</p>
<p>6. Section 216</p> <p>Owner of private road to carry out specified work</p>	<p>A hazard exists that is or is likely to become a danger to the public.</p> <p><i>Example: Storm Water run-off</i></p>	<p>The owner of the road.</p>
<p>7. Section 217</p> <p>Structure or equipment installed in, on, across, under or over road that may require repair.</p>	<p>A hazard exists that is or is likely to become a danger due to lack of repair or maintenance of structure or equipment.</p>	<p>The owner of the structure or equipment.</p>
<p>8. Section 218</p> <p>Crossing place from adjoining road to private land</p>	<p>A hazard exists from the establishment of a crossing place from adjoining road to private land.</p> <p><i>Example:</i></p> <p><i>Inappropriate position of crossing place creating a traffic hazard.</i></p> <p><i>Lack of repair creating a hazard to pedestrians.</i></p>	<p>The owner of land adjoining a road.</p>

Principles

Wherever possible, Council will take reasonable steps to have works undertaken or to resolve cases of local nuisances or hazards by negotiation with the person involved before considering issuing an Order.

This will occur except in cases of threat to life and immediate threat to public health or safety or in an emergency situation. Council retains the discretion to issue an Order at any stage depending on the circumstances of each individual case.

In each situation in which the Council is considering making an Order, the Council will consider the following circumstances:

- (a) Seriousness of the incident.
- (b) Degree of hazard/danger to the community.
- (c) Nature and degree of risk to health/safety of the community.
- (d) Level of detraction from the amenity of the locality.
- (e) The occurrence of the activity i.e. frequency, duration, previous incidents.
- (f) The impact of the activity.
- (g) Any other action already taken or proposed to prevent/minimize the problem.
- (h) Level of public interest.

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Procedures to be followed in making an Order

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

- (a) Give the person to whom it is proposed that the Order be directed, a notice in writing which outlines:
 - (i) The proposed action, including the terms of the proposed Order and the period within which compliance with the Order will be required.
 - (ii) The reasons for the proposed action; and
 - (iii) An invitation for the person to give reasons, within a specified time why the proposed action should not be taken.
- (b) If the notice is directed to a person who is not the owner of the relevant land. Council will take reasonable steps to serve a copy of the notices and order on the owner.
- (c) Council may, after considering any representations made within the specified time as detailed on the notice:
 - (i) Make an Order in accordance with the terms of the original proposal; or
 - (ii) Make an Order with modifications from the terms of the original proposal; or
 - (iii) Determine not to proceed with an Order.
- (d) Council may vary any Order or revoke any Order as it sees fit.
- (e) In the case of a threat to life and immediate threat to public health or safety or in an emergency situation, Council may in accordance with Section 255 (12) of the Act, make an Order and require compliance without undertaking the above notification process.

Rights of Review

The Order will include a statement, which sets out the rights of a person to apply for a review of the Order under the Act. Those rights of review are as follows:

- (a) A person to whom the Order is directed may, within 14 days after service of the Order, apply to the District Court for a review of the Order.
- (b) The operation of the Order continues pending the determination of an application for review under the Act.
- (c) The District Court or the Council may, if it thinks fit, make an interim order suspending the operation of the Order.
- (d) The District Court may, if satisfied that it is appropriate and just in the circumstances, vary or set aside an Order on an application for review.

Action for Non-Compliance with an Order

Non-compliance with an Order of the Council will constitute a breach of the Act and the person to whom the Order is directed may incur statutory penalties as provided for in the Act. The maximum penalty is \$750.00 and the expiation fee is \$105.00. Where the requirements of an Order are not complied with, the Council may:

- (a) Take the action required by the Order itself and recover the reasonable costs and expenses in doing so as a debt in accordance with Section 257 of the Act from the person who failed to comply with the Order.
- (b) Where an amount is recoverable under Section 257 of the Act, the Council may, by notice in writing, fix a period within which the amount is to be paid of no less than 28 days. Failure to pay will result in interest being accrued and if the person is the owner of the land a charge may be imposed on the land for the unpaid amount, including interest.

Enforcement of Policy

This Policy will be enforced by officers of the Council who have delegated authority to exercise the Order-making powers in the Act.

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Review of Policy

Any future amendment or alteration to this policy or a substitution of a new Policy will be subject to the public consultation provisions of the District Council of Karoonda East Murray and Section 259 (2) of the Act, unless the alteration has only minor significance and is likely to attract minimal community interest.

This Policy will be next reviewed in 2015 or where there is a change in legislation or circumstances.

Availability of Policy

This Policy is available for public inspection at the Council Office located at 11 Railway Terrace, Karoonda during normal business hours. Copies of this policy may be obtained upon request at a cost set by Council.