

## Order Making

Classification:	Council Policy
Policy Name:	Order making
First Issued / Approved:	October 2000
Last Reviewed:	25 September 2012, C8876 12 November 2013, C9479 24 February 2015, C10050 12 December 2017, C11537 12 May 2020, C12547
Next Review:	April 2024
ECM tracking number:	987885
Responsible Officer:	General Manager Corporate and Development General Manager Urban and Community
Relevant Legislation:	<i>Local Government Act 1999 (SA)</i> <i>South Australian Public Health Act 2012 (SA)</i>
Related Policies:	N/A

### 1. Introduction

- 1.1 The Council of the City of Burnside is responsible for the government and management of its Local Government Area. In particular it is the function of the Council to provide for the welfare, wellbeing and interests of the members of our community and to take measures to protect our area from hazards and to improve amenity.
- 1.2 To fulfil its functions, the Council has a range of statutory powers. These powers enable Council to exercise its regulatory functions by making policies, orders and by-laws. The Council has resolved to develop an Order Making Policy in relation to the exercise of the Council's powers pursuant to Part 2 of Chapter 12 of the *Local Government Act 1999 (SA)*, to promote the health, safety and wellbeing of our community. This Policy sets out the matters about which orders will be made. The relevant principles, procedures and penalties that will be applied are also established by this policy.

### 2. Strategic Plan Desired Outcomes

- 2.1 A safe community that values and supports its people.

### 3. Our Approach

- 3.1 Remain compliant with all relevant legislation, standards and codes.

#### 4. Legislative Requirements and Corporate Policy Context

- 3.2 Section 259 of the *Local Government Act 1999* (SA) requires the Council to prepare and adopt a policy for the operation of its order making power. The Policy is subject to public consultation, review and evaluation.
- 3.3 This Policy will apply to the matters set out in the *Local Government Act 1999* (SA) at sections 216, 218 and 254-258, which empower Council to order a person to do or refrain from doing a thing under certain circumstances.
- 3.4 This Policy does not apply to other circumstances provided for in the *Local Government Act 1999* (SA) and other South Australian Statutes, which specifically empower Council to make orders when appropriate and as the need arises.
- 3.5 The exercise of Council's order making power, in accordance with this Policy and relevant statutes, co-exists with Council's other regulatory powers. For example, the Council has power to make and enforce By-Laws in certain circumstances and to enforce compliance with the requirements of the *Local Government Act, 1999* and a range of other statutes.

#### 5. Policy

##### 5.1 Matters to Which Policy Applies

- 5.2 The matters to which this Policy applies are set out in Sections 216, 218 and 254 of the *Local Government Act 1999* (SA). These matters are:

##### 5.2.1 Power to order owner of private road to carry out specified roadwork: Section 216

- 5.2.1.1 The 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.

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

- 5.2.2.1 The 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.

##### 5.2.3 Unightly Conditions of Land: Section 254

- 5.2.3.1 The Council may make an order directing the owner or occupier of land to ameliorate an unsightly condition of land that detracts significantly from the amenity of the locality.

##### 5.2.4 Hazards on Land Adjoining a Public Place: Section 254

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

**5.2.5 Animals that May Cause a Nuisance or Hazard: Section 254**

5.2.5.1 Council may make an order against an owner or occupier of land or any person engaged in promoting or conducting an activity that creates a nuisance or hazard to health or safety associated with a live or dead animal or animals including birds, or otherwise to deal with animal or animals including birds.

**5.2.6 Inappropriate Use of a Vehicle: Section 254**

5.2.6.1 The Council may make orders against an owner or occupier of land or a person apparently occupying a caravan or vehicle which is used as a place of habitation.

**6 Emergency**

6.1 In accordance with Section 255, if a Council considers that in the circumstances of a particular case:

6.1.1 an activity constitutes or is likely to constitute a threat to life or an immediate threat to public health or public safety, or

6.1.2 that an emergency situation otherwise exists;

the Council may proceed immediately to make an order under this section without giving notice and require immediate compliance with the order.

**7. Principles**

7.1 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:

7.1.1 the severity of the incident or circumstance;

7.1.2 the hazard or danger posed to the community;

7.1.3 the risk to health and safety of the community;

7.1.4 detraction from the amenity of the locality;

7.1.5 the number of occurrences of the activity or incident;

7.1.6 the impact of any previous actions to deal with the activity or incident;

7.1.7 the significance of the breach, any other public interest or well-being considerations; and

7.1.8 the availability of a more appropriate response by the Council.

7.2 Council will apply the procedures in accordance with Section 255 of the *Local Government Act 1999 (SA)* in its order making activities.

7.3 Those subject to Order Making will have the Right of Review in accordance with Section 256 of the *Local Government Act 1999 (SA)*. The operation of the order

continues pending the determination of an application for review unless the District Court, or the Council, makes an interim order suspending the operation of the order.

- 7.4 Non-compliance will be dealt with in accordance with Section 257 and 258 of the *Local Government Act 1999* (SA). This may include recovery of costs, and imposition of a fine in accordance with the *Local Government Act 1999* (SA).

## 8. Availability

- 8.1 The Policy is available to be downloaded, free of charge, from Council's website [www.burnside.sa.gov.au](http://www.burnside.sa.gov.au)
- 8.2 The Policy will be available for inspection without charge at the Civic Centre during ordinary business hours and a copy may be purchased at a fee as set annually by Council.

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