

1. Introduction

The District Council of Peterborough (Council) is committed to using the order-making powers available to it under the Local Government Act 1999 (the Act) in a manner that facilitates a safe and healthy environment, improves the amenity of localities and supports the good governance of Council's area.

This Policy is prepared and adopted pursuant to section 259 of the Act and sets out the principles, processes and procedures Council will apply when considering and making orders.

2. Scope

Section 259 of the Act requires Council to take reasonable steps to prepare and adopt policies concerning the operation of Part 2 of Chapter 12 of the Act, which deals with the making of orders.

This Policy applies to:

- orders made under section 254 of the Act in the circumstances specified in the table in that section (reproduced in Attachment 1);
- orders under section 216 requiring the owner of a private road to carry out specified roadwork;
- orders under section 217 requiring the owner of infrastructure installed on a road to carry out specified maintenance or repair work; and
- orders under section 218 requiring the owner of adjoining land to carry out specified work relating to a crossing place from a road to the land.

Local nuisances and littering matters that fall within the jurisdiction of the Local Nuisance and Litter Control Act 2016 will be dealt with in accordance with that Act, rather than through this Policy.

3. Guiding Principles

When considering whether to make an order, Council will assess each matter on its merits and have regard to the following factors, as relevant:

- Severity of the incident or circumstances.
- The hazard or danger posed to the community.
- The risk to the health or safety of the community.
- The extent to which the matter detracts from the amenity of the locality.
- Whether the activity or incident is repeated or ongoing, including its duration and any previous offences or occurrences.
- The effect of any previous action taken to resolve the matter.
- Whether the breach is significant or substantial.
- Whether an informal approach or warning letter is likely to be sufficient.
- Any relevant public interest considerations.
- Whether sufficient, reliable evidence exists to support the exercise of Council's order-making powers.

- The attitude and level of cooperation of the person concerned.
- The number and nature of complaints received, if any.
- Whether the proposed action is reasonable, proportionate and within Council's powers and available resources.

4. Process and Procedure

Except in an emergency, Council will take reasonable steps, within available resources, to resolve the matter by negotiation and agreement before issuing an order. Depending on the circumstances, informal action may include:

- a personal approach or discussion by an authorised Council officer; and
- an informal warning letter before commencing the formal order-making process.

4.1 Notice of intention to make an order

Except in an emergency, before making an order Council will give notice of its intention to make the order in accordance with section 255 of the Act. The written notice will state:

- the proposed action;
- the terms of the proposed order, including what the person will be required to do or refrain from doing;
- the period within which compliance will be required;
- the penalties for non-compliance;
- the reasons for the proposed action; and
- the period within which the person may provide reasons why the proposed action should not be taken.

Council will consider any response received within the specified period before deciding whether to make, modify or not proceed with the proposed order.

4.2 Emergency orders

In accordance with section 255(12) of the Act, Council may make an order without prior negotiation or notice where it considers the circumstances or activity constitute, or are likely to constitute:

- a threat to life;
- an immediate threat to public health or public safety; or
- an emergency situation.

5. Review Rights

Under section 256 of the Act, a person to whom an order is issued, including an order under sections 254, 216 or 218, may appeal against the order. An appeal must be lodged within 14

days after the person receives the order. Council will include information about the applicable review or appeal rights in every order issued.

Any review or appeal rights applying to an order made under section 217 will be identified in the order and administered in accordance with the Act.

6. Non-compliance with an Order

If an order is not complied with within the period fixed for compliance, or where a review has been sought, within the period permitted after determination of the review, Council may, subject to the outcome of any review, take the action required by the order.

Council may recover its reasonable costs and expenses in taking that action as a debt from the person who failed to comply with the order.

Where an amount is recoverable, Council may give written notice fixing a payment period of not less than 28 days. If the amount is not paid within that period, interest may apply and Council may impose a charge over the land for the unpaid amount and interest in accordance with section 257(5) of the Act.

Failure to comply with an order is an offence and may attract the statutory penalties and expiation fees prescribed by the Act from time to time.

For an order issued under section 217, if the order is not complied with within the period specified in the order:

- Council may carry out the action required by the order and recover the cost of doing so as a debt from the owner; and
- the owner may be guilty of an offence and liable to the penalty prescribed by the Act.

7. Responsibilities and Delegations

This Policy will be administered and enforced by Authorised Persons appointed in writing by Council under section 260 of the Act.

Council may delegate powers and functions relating to orders under sections 254, 216, 217 and 218 of the Act to the Chief Executive Officer and/or Council employees. Any exercise of delegated authority must comply with the terms, conditions and limitations of the relevant instrument of delegation or subdelegation.

Order Making Policy

Attachment 1 – Order-making Powers

The following summary reflects the order-making circumstances in section 254 of the Local Government Act 1999. The current Act prevails if there is any inconsistency.

What may be ordered	Circumstances	Person to whom the order may be directed
Unightly condition of land	Refer to the Local Nuisance and Litter Control Act 2016.	As provided under that Act.
Fence, empty, drain, fill or cover land, including land containing a building or structure.	A hazard exists, or is likely to become, a danger to the public.	Owner or occupier of the land.
Remove overgrown vegetation, cut back overhanging branches or remove a tree.	The vegetation, branches or tree create, or are likely to create, danger or difficulty for persons using a public place.	Owner or occupier of the land.
Remove or modify a flag, banner, flagpole, sign or similar object or structure that intrudes into a public place.	The object or structure creates, or is likely to create, danger or difficulty for persons using a public place.	Owner or occupier of the land.

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What may be ordered	Circumstances	Person to whom the order may be directed
Where the public place is a road, take action necessary to protect the road or remove a hazard to road users. Examples include filling an excavation, preventing drainage across the road, constructing a retaining wall, removing or modifying a fence, fencing land to prevent animals escaping, or removing a structure or vegetation near an intersection.	A situation is causing, or is likely to cause, damage to the road or a hazard to road users.	Owner or occupier of the land.
Animals that may cause a nuisance or hazard.	Refer to the Local Nuisance and Litter Control Act 2016. A reference to an animal includes birds and insects.	As provided under that Act.
Refrain from using a caravan or vehicle as a place of habitation.	The caravan or vehicle is being used as a place of habitation in circumstances that present a health or safety risk to an occupant, threaten environmental damage, or detract significantly from the amenity of the locality.	Owner or occupier of the land, or a person apparently occupying the caravan or vehicle.

Section 216 – Private roads

Council may, by written order to the owner of a private road, require the owner to carry out specified roadwork to repair or improve the road.

Section 217 – Infrastructure on roads

Council may use the powers available under section 217 to require the owner of infrastructure installed on a road to carry out specified maintenance or repair work.

Section 218 – Crossing places

Council may, by written order 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.

Order Making Policy

Document administration and control

Policy title:	Order Making Policy
Policy number:	621117
Policy type:	Regulatory
Responsible officer:	Chief Executive Officer
Committee Review:	NA
First issued / adopted:	06/2003
Review period:	Reviewed within 12 months following the conclusion of a periodic election, in line with legislative changes or by resolution of Council.
Last reviewed:	07/2026
Next review date:	By March 2028
Current Version:	Version 4
Date revoked:	n/a
Applicable legislation:	• Local Government Act 1999 (SA), • Local Nuisance and Litter Control Act 2016 (SA) • Planning, Development and Infrastructure Act 2016 • Road Traffic Act • Fences Act 1975
Related documents:	• Delegations Register • Authorised Persons Policy • Enforcement Policy (if Council has one) • Community Engagement Policy • By-Laws • Customer Complaint Policy • Records Management Policy
Public consultation required / undertaken:	Yes

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Availability	This Policy is available for inspection at the Council office, and any person may obtain a copy of this Policy upon payment of the fee fixed by Council in accordance with Council's Fees and Charges adopted each financial year. It is also available on Council's website www.Peterborough.sa.gov.au. Any grievance in relation to this policy or its application should be forwarded in writing to the Chief Executive Officer of the Council.
File reference:	To be confirmed