

DRAFT - Order Making Policy

Contents

1. Preamble	2
2. Purpose	2
3. Scope	2
4. Principles	2
5. Policy Statement.....	3
6. Procedures	3
7. Right of review	3
8. Non-compliance with an order	3
9. Responsibilities and Delegations	4
10. Policy Review	4
11. Version History	4
12. Document Control.....	4
Attachment 1 - Local Government Act 1999	6

1. Preamble

The City of Mitcham is committed to using the order making powers available to it under the Local Government Act 1999 (the Act) in such a way as to facilitate a safe and healthy environment, and to improve the amenity of the locality, and generally for good governance of its area.

This Order Making Policy is prepared and adopted pursuant to Section 259 of the Act and sets out steps Council will take in preparing orders.

2. Purpose

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, in relation to Council ordering a person (land owner or occupier) to do or refrain from doing a specific thing.

3. Scope

This Policy will apply to the following circumstances listed in Section 254 of the Act:

- hazards on lands adjoining a public place;
- inappropriate use of a caravan or vehicle as a place of habitation.

It will also apply to the following Sections of the Act:

- Section 216: Power to order owner of private road to carry out specified work.
- Section 218: Power to require owner of adjoining land to carry out specified work.

4. Principles

When making orders to require a person to act or refrain from acting, the City of Mitcham will consider each case on its merits and will take into consideration the following principles for the effective resolution of local nuisances on private land and/or the improvement of amenity on private land:

- 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
- The existence of any other public interest issues;
- Whether there is sufficient evidence upon which Council may rely to exercise its order making powers;
- Number of complaints received in respect of the matter (if any); and
- The availability of a more appropriate response by Council.

5. Policy Statement

Council will endeavour to resolve matters involving the use of order-making powers under sections 216, 218 and 254 of the Act by negotiation wherever possible, before considering issuing an order.

6. Procedures

Except in the case of an emergency described below, before making an order Council will give notice of its intention to make an order in accordance with section 255 of the Act by:

- Giving the person to whom an order is intended to be directed a notice in writing stating the:
 - Proposed action;
 - Terms of the proposed order (i.e what it requires the person to do or refrain from doing);
 - Period within which compliance with the order will be required;
 - Penalties for non-compliance; and
 - Reasons for the proposed actions
- Inviting the person notified of the opportunity to give reason/s, within a specified time, why the proposed action should not be taken.

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.

7. Right of review

Pursuant to Section 256 of the Act, any person to whom an order is issued (including an order issued under Sections 254, 216 or 218 of the Act) may seek a review by South Australian Civil and Administrative Tribunal (SACAT). Any such appeal must be lodged within 14 days of that person's receipt of the order. The Council will ensure that reference to this right of review is included in any order issued.

8. Non-compliance with an order

If an order is not complied with within the time fixed for compliance (or if there is an application for review, within 14 days after the determination of the review) Council may (subject to the outcome of the review) take the action required by the order.

The reasonable costs and expenses incurred by Council in taking action under this section may be recovered by Council as a debt from the person who failed to comply with the requirements of the order.

Where an amount is recoverable by Council, Council may, by notice of writing to the person, fix a period, being not less than 28 days from the date of the notice, within

which the amount must be paid and, if the amount is not paid by the person within that period, the person is liable to pay interest and Council may impose a charge over the land for the unpaid amount, together with interest, in accordance with Section 257(5) of the Act.

Non-compliance with an order of Council is an offence for which a person may incur a statutory penalty provided for in the Act. Section 258 of the Act provides a maximum penalty of \$2,500 and an expiation fee of \$210 for failure to comply with an order issued under the Act.

9. Responsibilities and Delegations

The Order Making Policy will be administered by Authorised Officers who have been appointed by the Chief Executive Officer and/or any person who has been delegated the authority to exercise the powers under the Act.

10. Policy Review

This Policy will be subject to review every four (4) years or sooner at the discretion of the relevant General Manager.

Public consultation will be required if future amendments and alterations are made to the Policy, unless the alteration has only minor significance and is likely to attract little or no community interest. The CEO has delegated authority to endorse any minor amendments to the Policy that do not vary the intent of the policy.

11. Version History

Version	Author(s) Position	Changes	Date
3	Manager Environmental Services	Now includes s216 and s218 of LG Act Penalties have increased Removed procedural steps	26/10
4	Governance Officer	Refer to Full Council Resolution 12 November 2019 Item 9.4	12 November 2019
5	Governance Officer	Convert document into new Policy Format	5 February 2020
6	Governance Officer	Minor Amendments	3 March 2020
7	Governance	Major review	May 2026

12. Document Control

Responsible Department	Governance
Delegations Contained within Policy	YES
Classification	Governance
Applicable legislation	Local Government Act 1999

Related Policies & Corporate Documents			
Additional references			
Endorsed by Council	24/03/2020	Item No:	9.4
Effective Date	24/03/2020	Next Review Date:	Overdue
ECM No. 193782			

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Attachment 1 - Local Government Act 1999

254—Power to make orders

- (1) *A council may order a person to do or to refrain from doing a thing specified in Column 1 of the following table if in the opinion of the council the circumstances specified opposite it in Column 2 of the table exist and the person comes within the description opposite it in Column 3 of the table.*

<i>To do or to refrain from doing what?</i>	<i>In what circumstances?</i>	<i>To whom?</i>
<i>1. Unsightly condition of land</i>		
<i>Refer to Local Nuisance and Litter Control Act 2016</i>		
<i>2. Hazards on lands adjoining a public place</i>		
<i>(1) To fence, empty, drain, fill or cover land (including land on which there is a building or other structure).</i>	<i>(1) A hazard exists that is, or is likely to become, a danger to the public.</i>	<i>(1) The owner or occupier of the land.</i>
<i>(2) To remove overgrown vegetation, cut back overhanging branches, or to remove a tree.</i>	<i>(2) The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place.</i>	<i>(2) The owner or occupier of the land.</i>
<i>(3) To remove or modify a flag or banner, a flagpole or sign, or similar object or structure that intrudes into a public place.</i>	<i>(3) The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place.</i>	<i>(3) The owner or occupier of the land.</i>

<i>To do or to refrain from doing what?</i>	<i>In what circumstances?</i>	<i>To whom?</i>
(4) <i>Where the public place is a road—to take action necessary to protect the road or to remove a hazard to road users.</i>	(4) <i>A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.</i>	(4) <i>The owner or occupier of the land.</i>

Examples—

- *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.*

3. Animals that may cause a nuisance or hazard

Refer to Local Nuisance and Litter Control Act 2016

4. Inappropriate use of vehicle

<i>To do or to refrain from doing what?</i>	<i>In what circumstances?</i>	<i>To whom?</i>
<i>To refrain from using a caravan or vehicle as a place of habitation.</i>	<i>A person is using a caravan or vehicle as a place of habitation in circumstances that—</i> <i>(a) present a risk to the health or safety of an occupant; or</i> <i>(b) cause a threat of damage to the environment; or</i> <i>(c) detract significantly from the amenity of the locality.</i>	<i>The owner or occupier of the land or a person apparently occupying the caravan or vehicle.</i>

- (2) *A reference in the table to an animal or animals includes birds and insects.*

216—Power to order owner of private road to carry out specified roadwork

- (1) *A 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.*
- (2) *Divisions 2 and 3 of Part 2 of Chapter 12 apply with respect to—*
- (a) any proposal to make an order; and*
- (b) if an order is made, any order,*
- under subsection (1).*

218—Power to require owner of adjoining land to carry out specified work

- (1) *A 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.*
- (2) *Divisions 2 and 3 of Part 2 of Chapter 12 apply with respect to—*
- (a) any proposal to make an order; and*
- (b) if an order is made, any order,*
- under subsection (1).*