



<b>Policy Name</b>	<b>Order Making</b>
<b>Policy Number</b>	CD25
<b>Responsible Section</b>	Community & Environmental Health
<b>Responsible Department</b>	Community Development
<b>Date Last Adopted</b>	12 December 2023
<b>Date of Next Review</b>	December 2026
<b>Applicable Legislation</b>	Local Government Act 1999
<b>Related Governance Documents</b>	4.01.01 – Administrative Enforcement Policy Enforcement Procedure
<b>City Plan Theme</b>	Community – A City that supports community wellbeing Leadership – A City confident in its leaders

**PURPOSE/OBJECTIVE**

The City of Port Adelaide Enfield 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, to improve the amenity of a locality, and generally for the good governance of its area.

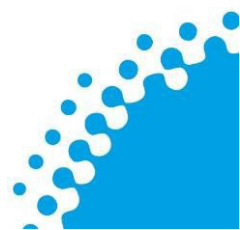
This Order Making Policy is prepared and adopted pursuant to section 259 of the Act and sets out the steps Council will take in the making of orders.

**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.

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 Appendix 1).

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), section 218 (power to require owner of adjoining land to carry out specified work). This Policy will also apply to section 217 (power to order owner of infrastructure on road to carry out specified maintenance or repair work).



## **PRINCIPLES**

When considering making an order within the scope of this policy The City of Port Adelaide Enfield will consider the following principles, in conjunction with Council's Administrative Enforcement Policy:

- Seriousness of the offence; and
- Degree of willfulness involved; and
- The offender's past history; and
- Consequences of non-compliance; and
- Likely effectiveness of the various enforcement options; and
- Deterrence; and
- Effect on the community and other people; and
- Consistency of approach to similar breaches/offences

## **POLICY**

Except in the case of an emergency described below, Council will take reasonable steps, within available resources, to resolve cases of hazards on land adjoining a public place or inappropriate use of vehicle by negotiation and agreement before issuing an order. Council will take into consideration the persons individual circumstances including diagnosed mental health condition prior to issuing an order.

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,
  - reasons for the proposed action, and
- 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:

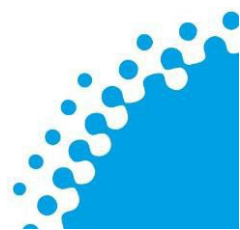
- A threat to life, or
- An immediate threat to public health or public safety, or
- An emergency situation.

## **Review Rights**

Pursuant to section 256 any person to whom an order is issued (including an order issued under sections 254, 216 or 218 of the Act) has a right to appeal against the order. 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.

## **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) the Council may (subject to



the outcome of any 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 in 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 for a maximum penalty of \$2,500 and an expiation fee of \$210 for failure to comply with an order issued under the Act.

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

- Council may carry out the action required by the order and recover the cost of doing so as a debt for the owner; and
- The owner is guilty of an offence and liable to a maximum penalty not exceeding \$5,000.

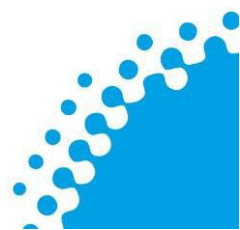
### **Responsibilities & Delegations**

This policy will be enforced by Authorised Persons who have been appointed (in writing) by the Council under section 260 of the Act Authorised Persons have powers under Section 261 of the Act to enforce breach of orders by way of expiation.

Council may also choose to delegate the power to issue orders under sections 254, 216 and 218 of the Act to Council staff, in which case, Council will ensure appropriate delegations are in place.

### **DEFINITIONS**

Act means the Local Government Act 1999.



## APPENDIX 1 – SECTION 254

To do or to refrain from doing what?	In what circumstances?	To whom?
<b>1. Hazards on land adjoining a public place</b>		
To fence, empty, drain, fill or cover land (including land on which there is a building or other structure).	A hazard exists that is, or is likely to become, a danger to the public.	To the owner or occupier of the land.
To remove overgrown vegetation, cut back overhanging branches, or to remove a tree.	The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place.	To the owner or occupier of the land.
To remove or modify a flag or banner, a flagpole or sign, or similar object or structure that intrudes into a public place.	The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place.	To the owner or occupier of the land.
Where the public place is a road, to take action necessary to protect the road or remove a hazard to road users.	A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.	To the owner or occupier of the land.
<b>Examples:</b> (1) To fill an excavation, or to prevent drainage of water across the road; (2) To construct a retaining wall or to remove or modify a fence; (3) To fence land to prevent the escape of animals; (4) To remove a structure or vegetation near an intersection.		
<b>2. Inappropriate use of a vehicle</b>		
To refrain from using a caravan or vehicle as a place of habitation.	A person using a caravan or vehicle as a place of habitation in circumstances that: (1) Present a risk of health and safety of an occupant; or (2) Cause a threat of damage to the environment; or (3) Detract significantly from the amenity of the locality.	The owner or occupier of the land or a person apparently occupying the caravan or vehicle.
<b>Example:</b> (1) A person living in a caravan on a block not supplied with toilet facilities		

