

Policy Document

ORDER MAKING POLICY

Policy No: DCSB-LP-15-02	Version No: 3.0	Administered by: Manager, Regulatory Services
Approved by: Council	Approved on: January 2015	Agenda Item/Minute Book No or Approval Ref: 12/15
Last Reviewed: January 2015	Review Date: January 2018	File No: 15.063.001.001
Classification: Legal Provisions		
Strategic Plan link: Strategy 1.1.7 Ensure compliance of relevant Council policies and procedures with legislative requirements.		
Local Government Act 1999 DCSB-LP-15-01 Enforcement Policy		

1.0 Introduction

The District Council of Streaky Bay 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.

2.0 Policy Objective

The District Council of Streaky Bay is responsible for the governance and management of its area at a local level. In particular it is a function of the council to provide for the welfare, well-being and interests of the members of the community and to take measures to protect its area from hazards and to improve amenity.

This Policy 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) and section 299 (vegetation clearance).

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 Section of this policy

3.0 Policy Detail

This Policy will apply to the matters set out in the Local Government Act 1999 at Sections 216, 218, 254, 255 and 299 which empower the Council to order a person to do or refrain from acting under certain

circumstances. This Policy does not apply to other circumstances provided for in the Local Government Act 1999 and other south Australian legislation, which specifically empower the Council to make Orders, when appropriate and as the need arises.

The exercise of the Council's order-making power, in accordance with this Policy and relevant statute, 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 legislation.

3.1 Matter to which this policy relate

The matters to which this Policy applies are set out below. The matters are stated in general terms and were required particular examples for illustration. These examples are not intended to be an exhaustive list of the circumstances in which the Policy will apply. They are included to assist the community to understand the purpose and intent of this Policy and the way in which it will be applied.

3.1.1 Power to order owner of private road to carry out specific works: Section 216

The authorised Council officer may by order in writing to the owner of a private road, require the owner to carry out specified road work to repair or improve the road.

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

The Council may make an Order directing the owner of a private road to carry out specific road works to construct, remove or repair a crossing place from the road to the land

3.1.3 Unsightly conditions of Land: section 254

The authorised Council officer may make an Order directing the owner or occupier of land to ameliorate an unsightly condition of land that detracts from the amenity of the locality.

Examples of relevant circumstances:

- one or more vehicles, boats, trailers, buses stored outside an approved compound or structure;
- the storage of rubbish, waste materials, building materials, spare parts and other objects on a property outside an approved structure or compound;
- the storage of goods and materials outside a building and near an adjoining property or road boundary in an Industrial Estate;
- the accumulation of dead, dying or overgrown vegetation;
- the accumulation of farm machinery and goods outside an approved farm building.

3.1.4 Hazard on Land adjoining a public Place Section 254

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

Examples of relevant circumstances:

- a dangerous fence adjoining any road, community land or public place;
- where there are overhanging branches, overgrown vegetation or structures on land adjoining a public place which obstruct streets;
- where there is drainage of water across the footpath or road;
- where a flag, banner, flagpole or sign intrudes into a public place.

3.1.5 Animals that may cause a nuisance of Hazard Section 254

The authorised Council officer may make an Order directed to 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, or otherwise to deal with animal or animals.

Examples of such circumstances include:

- slaughtering of animals in an urban situation;
- keeping an excessive number of insects, birds or other animals;
- keeping animals which generate excessive noise, dust or odour or attract pests or vermin;
- keeping an aggressive animal or keeping an animal in a situation where it cannot be adequately contained or may cause danger to the public;
- failing to deal with a wasps nest;
- failure to bury or otherwise lawfully dispose of any dead animal or bird;
- failing to keep poultry in an appropriate structure free from vermin so as to cause a nuisance or be injurious to health;
- the keeping of bees in close proximity to other property.

3.1.6 In appropriate use of a vehicle Section 254

The authorised Council officer may make Orders directed to an owner or occupier of land or a person apparently occupying a caravan or vehicle which is used as a place of habitation.

Examples of circumstances:

- where use of a caravan or vehicle for habitation presents a risk to the health and safety of an occupant;
- use of the vehicle as habitation causes a threat of damage to the environment;
- use of the vehicle as habitation detracts significantly from the amenity of the locality.

3.1.7 Encroaching Vegetation: Section 299

The authorised Council officer may, on the application of the owner or occupier of the land (the “relevant land”), by Order, require the owner or occupier of adjoining land to remove or cut back vegetation encroaching on to the relevant land.

3.2 Considerations

When considering making an order within the scope of this Policy, the District Council of Streaky Bay will consider the following principles, which are considered central to the effective resolution of local nuisances on private land. Each case for the possible use of the order making powers will be considered on its merits.

Factors that Council will consider include:

- Severity of the incident
- Hazard/danger posed to the community
- Detraction from the amenity of the locality
- Repeated occurrence of the activity/incident (e.g. Duration, previous offences)
- Impact of any previous actions to overcome the problem
- Is the breach significant/substantial
- Would an informal warning letter be sufficient
- Are there any public interest issues
- Whether there is sufficient avoidance upon which Council may rely to exercise its order making powers
- The offender's attitude
- Number of complaints received in respect of the matter (if any)

In the case of vegetation clearance orders made under section 299 of the Act, Council has adopted the following specific considerations to assist in determining what circumstances might effectively be a private dispute between neighbours:

- Have the parties exhausted all other reasonable steps (including civil action)
- Does the vegetation pose an immediate and/or serious threat to health and safety
- The apportionment of costs of complying with the order

4. Enforcement Options

Except in the case of an emergency described below, Council will take reasonable steps, within available resources, to resolve cases of local nuisance by negotiation and agreement as set out In the Enforcement Policy before issuing an order.

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.

Where notice of a proposed Order has been given to a person who is not the owner of the relevant land, the authorised Council officer must take reasonable steps to serve a copy of the notice on the owner of the land.

The authorised Council officer may vary any Order or revoke any order as it considers fit.

5. Review Rights

Pursuant to section 256 any person to whom an order is issued (including an order issued under sections 216, 218, 254 or 299 of the Act) has a right to appeal against the order. Any such appeal must be lodge an appeal with the District Court within 14 days of that person's receipt of the order.

6. 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.

Policy Details

VERSION	DATE ADOPTED	MINUTE BOOK NUMBER
V1.0	Jan 2001	
V1.0	Sep 2009	
V2.0a	Dec 2011	291/11
V3.0	Jan 2015	12/15