



Order Making Policy

Statutory Policy

Renmark Paringa Council

Responsible Officer	Director of Corporate and Community Services
Relevant Legislation	Local Government Act 1999 Chapter 12 Part 2 – Orders Sections 216, 218, 254, 255, 257, 259 and 260.
Adopted	March 2001
Reviewed	October 2023
Next Review	October 2027

Objective

The Renmark Paringa Council is committed to using the order making powers available to it under the Local Government Act 1999 (the Act) as necessary and appropriate to provide for the safety and welfare of the public, to improve the amenity of a locality and generally for the good governance of its area.

This policy has been prepared and adopted pursuant to section 259 of the Act and sets out the matters about which orders will be made and the steps the Council will take in making orders.

Policy

Section 259 of the Act requires the Council to prepare and adopt a policy concerning the operation of Part 2 of Chapter 12 of the Act. Part 2 deals with the making of orders.

This Policy will apply to those circumstances listed in Section 254 of the Act 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.

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) and Section 218 (power to require owner of adjoining land to carry out specified work).

Local nuisances (other than those found in the Local Government Act) are also contained in the Local Nuisance and Litter Control Act 2016. Nuisance and littering actions that fall within the jurisdiction of the Local Nuisance and Litter Control Act will be dealt with in accordance with the procedure set out in that Act.

Guiding Principles

When considering making an order within the scope of this policy Renmark Paringa Council will consider the following principles, which are considered central to the effective resolution of local nuisances on private land:

On each occasion that 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 (the extent that is relevant and necessary) the following:

- the severity of the incident or circumstance
- the hazard or danger posed to the community
- the risk to health and safety of the community
- the degree of detraction from the amenity of the locality (if any)
- 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, any other public interest or well-being considerations
- whether there is sufficient evidence upon which Council may rely to exercise its order making powers
- the availability of a more appropriate response by the Council
- the effect of any initial negotiations with a landowner or occupier in resolving a matter.

Process and Procedures

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 before 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 –



- I. proposed action
 - II. terms of the proposed order
 - III. period within which compliance with the order would be required
 - IV. penalties for non-compliance
 - V. reasons for the proposed order
- inviting the person notified to give reasons, within a specified time, as to 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 of the Act 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 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. The Council may expiate or prosecute any failure to comply with an order as it sees fit.

Responsibilities & Delegations

This policy will be enforced by Authorised Persons who have been appointed (in writing) by the Council under Section 260 of the Act¹.

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.

Council Endorsement of the Policy

Any future amendment or alteration to the Policy or a substitution of a new Policy, will be subject to the public consultation provisions of the Act at section 259 (2), unless the alteration has only minor significance and is likely to attract little or no community interest.

Document Control

Version #	Approval Date	Approved by	Amendment
1	June 2021	Policy Review Committee	Policy format/template updated. Updated to remove the inclusion of Section 254 of the Act table.
2	17 October 2023.	Policy Review Committee	Minor additions, as per LGA recommended policy template

¹ Authorised Persons have powers under Section 261 of the Act to enforce breach of orders by way of expiation