

	COUNCIL POLICY O110 ORDER MAKING	Version No:	11
		Issued:	September 2019
		Next Review:	September 2023

1. INTRODUCTION

- (a) This document sets out the policy of the City of Mount Gambier (“Council”) for the making of Orders.
- (b) The City of Mount Gambier is committed to using the order making powers available to it under the Local Government Act 1999 in such a way as to facilitate a safe and healthy environment, and to improve the amenity of the locality, and generally for the good governance of its area.
- (c) This Policy sets out the principles and processes Council and any Council Officers acting under delegated authority will consider in the making of orders.

2. SCOPE

- (a) Section 259 of the Local Government Act 1999 requires Council to take reasonable steps to prepare and adopt policies relating to Order Making. Chapter 12, Part 2, Section 254 of the Act relates to power to make orders.
- (b) 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 something as specified in the table included within that Section of the Act. Excerpt from Section 254:

Column 1	Column 2	Column 3
To do or to refrain from doing what?	In what circumstances?	To whom?
<p>2. Hazards on lands adjoining a public place</p> <p>(1) To fence, empty, drain, fill or cover land (including land on which there is a building or other structure).</p> <p>(2) To remove overgrown vegetation, cut back overhanging branches, or to remove a tree.</p> <p>(3) To remove or modify a flag or banner, a flagpole or sign, or similar object or structure that intrudes into a public place.</p> <p>(4) Where the public place is a road—to take action necessary to protect the road or to remove a hazard to road users.</p> <p>Examples—</p> <ul style="list-style-type: none"> · To fill an excavation, or to prevent drainage of water across the road. 	<p>(1) A hazard exists that is, or is likely to become, a danger to the public.</p> <p>(2) The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place.</p> <p>(3) The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place.</p> <p>(4) A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.</p>	<p>(1) The owner or occupier of the land.</p> <p>(2) The owner or occupier of the land.</p> <p>(3) The owner or occupier of the land.</p> <p>(4) The owner or occupier of the land.</p>

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<ul style="list-style-type: none"> · 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. 		
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<p>4. Inappropriate use of vehicle</p> <p>To refrain from using a caravan or vehicle as a place of habitation.</p>	<p>A person is using a caravan or vehicle as a place of habitation in circumstances that—</p> <p>(a) present a risk to the health or safety of an occupant; or</p> <p>(b) cause a threat of damage to the environment; or</p> <p>(c) detract significantly from the amenity of the locality.</p>	<p>The owner or occupier of the land or a person apparently occupying the caravan or vehicle.</p>
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- (c) In addition to Section 254, this policy will also apply to the making of any orders under 216 (Power to order owner of private road to carry out specified roadwork), 217 (Power to order owner of infrastructure installed on road to carry out specified maintenance or repair work) and 218 (Power to require owner of adjoining land to carry out specified work).
- (d) As additional issues arise Council will need to list its intentions to issue orders by giving examples in addition to those specified in the table in Section 254 of the Act. Any additional issues will be annexed to an updated version of this Policy.

3. GUIDING PRINCIPLES

- (a) When considering making an Order within the scope of this Policy the City of Mount Gambier will consider the following principles, which are considered central to effective resolution of local nuisances on private land:
1. Every reasonable effort will be made to resolve the matter by negotiation prior to instigating the order making process.
 2. Each case for the possible use of the order making powers will be assessed on its individual merits. Factors that will be considered include:
 - Severity or seriousness of the incident
 - Extent of hazard/danger posed to the community
 - Nature and level of risk to health/safety of the community
 - Extent of detraction from the amenity of the locality
 - Impact on the environment
 - Occurrence of the activity/incident e.g. frequency, duration.
 - Impact of any previous actions to overcome the problem
 - Any public interest issues
 - The evidence available
 - Implications of not taking any action.

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		Next Review:	September 2023

3. Procedural fairness and natural justice.

4. PROCESS

- (a) Except in the case of an emergency, the initial response to complaints of local nuisance will generally be a personal visit or telephone call by an authorised officer to attempt to resolve the matter with as little formality as possible.
- (b) If this approach is not effective, a letter detailing the complaint, the required action to resolve the matter and stipulating a reasonable timeframe, will be sent to the occupier of the land.
- (c) Except in the case of an emergency, If this still does not result in a satisfactory outcome the formal order making process will be instigated by giving the person to whom an order is intended to be directed, a notice of intention to issue an order detailing the information required by Section 255 of the Act, including:
1. The proposed action
 2. Reasons for the proposed action
 3. Terms of the proposed order
 4. Period within which compliance with the order is required
 5. Penalties for non compliance
 6. Opportunity to give reasons in writing to Council within 14 days of notification, on why the proposed order should not be given.
- (d) Where protracted informal negotiations have failed to achieve the desired outcome, the first letter from Council may be the formal notice of intention to issue an order.
- (e) Where the order is intended to direct a person who is not the owner of the land to take certain action, reasonable steps will be taken to serve a copy of any notices or orders on the owner of the land.
- (f) Where representations are received about a proposed order, the delegated officer may:
1. Make the order on the terms of the original proposed order
 2. Make an order with the modifications from the terms of the original proposed order (and not give further notice before making the modified order), or
 3. Determine not to proceed with making the order.
- (g) In cases where the delegated officer considers the circumstances or activity constitutes or is likely to constitute:
1. a threat to life; and
 2. immediate threat to public health or public safety; or
 3. an emergency situation;

and that immediate action is required, the order and required compliance may be imposed without undertaking the above notification process.

5. REVIEW RIGHTS

	COUNCIL POLICY O110 ORDER MAKING	Version No:	11
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- (a) Pursuant to Section 256 any person to whom an order is issued (including an order issued under Sections 254, 216 or 218) has a right to appeal against the order.
- (b) Any such appeal must be lodged within 14 days of that person's receipt of the order.
- (c) The Council will ensure that reference is to the right of review is included in any order issued.

6. NON COMPLIANCE

- (a) 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.
- (b) 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.
- (c) Where any 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.
- (d) 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.
- (e) Under Section 217, if the order is not complied with within the time specified in the order:
 - 1. Council may carry out the action required by the order and recover the cost of doing so as a debt for the owner; and
 - 2. the owner is guilty of an offence and liable to a maximum penalty not exceeding \$5,000.

7. RESPONSIBILITIES AND DELEGATIONS

- (a) Council may delegate the power to issue orders under Sections 254, 216 and 218 of the Act to the Chief Executive Officer and the CEO may further sub delegate these powers.
- (b) Delegations and subdelegations to issue orders under these sections are kept in Council's record of delegations which is reviewed at least once every financial year.

8. COUNCIL ENDORSEMENT OF THE POLICY

- (a) This Policy was adopted by Council on <date to be added>. Council adopted the Policy following public consultation on its Draft Policy. Written submissions commenting on the Draft Policy were invited within 28 days of a notice appearing in the local newspaper via "The Border Watch" and through notice on Council's website. <add in number of submissions received> submissions were received.

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		Next Review:	September 2023

- (b) Any future amendment or alteration to the Policy, or substitution of a new Policy, will be subject to the public consultation provisions under Section 259 (2) of the Act unless the alteration has only minor significance.

9. AVAILABILITY OF POLICY

This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website www.mountgambier.sa.gov.au. Copies will also be provided to interested members of the community upon request, and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.

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File Reference:	
Applicable Legislation:	Local Government Act 1999
Reference:	Community Plan 2016 - 2020
Related Policies:	
Related Procedures:	
Related Documents:	

DOCUMENT DETAILS

Responsibility:	General Manager City Growth
Version:	11.0
Last revised date:	17 September, 2019
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First Adopted By Council:	20 July 2000
Reviewed/Amended:	21 October 2003; 16 November 2004; 15 November 2005; 28 November 2006; 20 November 2007; 19 November 2008; 17 February 2009; 21 December 2010; 17 February 2015, 19 February 2019, 17 September 2019