

	ORDER MAKING POLICY	Version No:	2.1
		Issued:	December 2011
		Next Review:	July 2019

Adopted by Council	8 December 2010
Reviewed and updated	14 December 2011
Reviewed and updated	October 2015

1. INTRODUCTION

The District Council of Franklin Harbour 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, to improve the amenity of the locality and generally, for the good governance of its area.

The District Council of Franklin Harbour's Order Making Policy is established pursuant to section 259 of the *Local Government Act* 1999 and sets out the steps Council will take in the making of orders.

2. SCOPE

Section 259 of the Local Government Act 1999 requires Council to take reasonable steps to prepare and adopt policies 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 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 Attachment 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 owner of private road to carry out specified roadwork), Section 218 (Power to require owner of adjoining land to carry out specified work) and Section 299 (vegetation clearance)¹.

¹ Refer Sections 216(2), 218(2) and 299(2)

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Council has also determined to extend the application of this Policy to orders issued under Section 217 of the Act (in relation to Council's power to order the owner of infrastructure installed on a road to carry out specific maintenance or repair).

3. GUIDING PRINCIPLES

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

3.1 Each case for the possible use of the order making powers will be considered on its merits. Factors that Council will consider include:

- the severity of the incident;
- hazard/danger posed to the community;
- risk to health/safety of the community;
- detraction from the amenity of the locality;
- repeated occurrence of the activity/incident (eg 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 evidence upon which Council may rely to exercise its order making powers
- the offenders attitude
- the number of complaints received in respect of the matter (if any).

3.2 Except in cases described in 3.3 below, in accordance with Section 255 of the Act, appropriate measures will be taken prior to making an order including:

- 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 (ie 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
 - inviting the person notified of the opportunity to give reason/s, within a specified time, why the proposed action should not be taken.

3.3 Reasonable steps will be taken to resolve cases of local nuisance by first negotiating with the person involved before considering issuing an order, except in cases where:

- Council considers the circumstances 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.

4. REVIEW RIGHTS

Pursuant to section 256 any person to whom an order is issued (including an order issued under sections 254, 216, 218 or 299 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.

5. NON-COMPLIANCE WITH AN ORDER

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 Section 254 of the Act.

Additionally, where a person fails to comply with the requirements of any order, Section 257 of the Act confers powers upon the Council to take the action required by the order and to recover the reasonable costs and expenses incurred as a debt from the person to whom the order was issued.

Further, 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 from the owner; and
- the owner is guilty of an offence and liable to a maximum penalty not exceeding \$5,000.

6. RESPONSIBILITIES & DELEGATIONS

The District Council of Franklin Harbour's policy will be enforced by Authorised Persons who have been appointed (in writing) by the Council under Section 260 of the Act².

² Authorised Persons have powers under Section 261 of the Act to enforce breaches of orders by way of expiation
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Council may also choose to delegate the power to issue orders under Section 254, 216, 218 and 299 of the Act to Council staff, in which case, Council will ensure appropriate delegations are in place.

7. COUNCIL ENDORSEMENT OF THE POLICY

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 and is likely to attract little or no community interest.

8. REVIEW AND EVALUATION

The effectiveness of the Policy will be reviewed and evaluated as determined necessary by Council or the CEO every 12 months. Public consultation is required, unless the Council determines the amendment is of minor significance.

The Chief Executive Officer will report to Council on the outcome of any evaluation, and make recommendations for amendment, alteration or substitution of a new Policy.

9. FURTHER INFORMATION

Members of the public may inspect this Order Making Policy at the principal office of the District Council of Franklin Harbour, 6 Main Street Cowell SA 5602, and on payment of a fee obtain a copy. A copy may also be downloaded from Councils website www.franklinharbour.sa.gov.au.

SIGNED:
Responsible Officer
Date: ____ / ____ / ____

Attachment 1

Chapter 12 Regulatory Functions
Part 2 Orders
Division 1 Power to make orders
Section 254 Power to make orders

“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.1”

1. A reference in the table to an animal or animals includes birds and insects.

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
1. Unsightly condition of land To take action considered by the council to be necessary to ameliorate an unsightly condition	Land, or a structure or object on land, is unsightly and detracts significantly from the amenity of the locality in which the land is situated	The owner or occupier of the land
2. Hazards on lands adjoining a public place 1) To fence, empty, drain, fill or cover land (including land on which there is a building or other structure). 2) To remove overgrown vegetation, cut back overhanging branches, or to remove a tree 3) To remove or modify a flag or banner, a flagpole sign, or similar object or structure that intrudes into a public place. 4) Where the public place is a road - to take action necessary to protect the road or to remove a hazard to road users.	1) A hazard exists that is, or is likely to become, a danger to the public 2) The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place 3) The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place 4) A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.	1) The owner or occupier of the land 2) The owner or occupier of the land 3) The owner or occupier of the land 4) The owner or occupier of the land

<p><i>Examples</i></p> <ul style="list-style-type: none"> -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 		
<p>3. Animals that may cause a nuisance or hazard</p> <p>To do or to refrain from doing the thing specified in the order in order to abate a nuisance or a hazard to health or safety associated with a live or dead animal or animals, or otherwise to deal with an animal or animals.</p>	<p>A person is keeping or dealing with (or failing to deal with) an animal or animals (whether the animal or animals are alive or dead) so as to cause, or to be likely to cause, a nuisance or a hazard to health or safety</p> <p>A person is the owner or occupier of land where an animal or animals are located which may cause, or be likely to cause, a nuisance or a hazard to health or safety, or otherwise to become a pest</p> <p><i>Examples</i></p> <p>The slaughtering of animals in a town or urban situation</p> <p>Keeping an excessive number of insects, birds or other animals</p> <p>Keeping bees in close proximity to other property</p> <p>Keeping animals so as to generate excessive noise, dust or odours, or to attract pests or vermin</p>	<p>The owner or occupier of land or any person apparently engaged in promoting or conducting an activity</p>

	<p>Keeping an aggressive animal, or keeping an animal in a situation where it cannot be adequately contained or may cause danger to the public</p> <p>Failing to deal with a wasp's nest</p>	
<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> <ul style="list-style-type: none"> -present a risk to the health or safety of an occupant; or -cause a threat of damage to the environment; or -detract significantly from the amenity of the locality 	<p>The owner or occupier of the land of a person apparently occupying the caravan or vehicle.</p>