

<b>POLICY</b>	<b>ROBY COUNCIL</b>	Responsible Department	Governance
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<b>ORDER MAKING</b>	
<b>Latest Review Changes</b>	Minor formatting and editorial changes, update to new template Inclusions of a Definitions table. Inclusion of sections: <b>2. STATEMENT</b> <b>7. AUTHORISED OFFICERS</b>
<b>Previous Council Reviews</b>	31.01.12, 30.05.13, 30.05.15, 26.06.19
<b>Previous Audit Committee Reviews</b>	30.05.13, 17.05.19

**Applicable Legislation**

<p><i>Local Government Act 1999</i></p> <p><i>Local Nuisance and Litter Control Act 2017</i></p>
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**Related Policies**

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**Related Procedures**

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**Reference Documents**

<p>LGA Model - Order Making Policy (August 2017)</p>
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## 1. INTRODUCTION

Councils have order making powers available to them under the *Local Government Act 1999* ('the Act') to target and resolve cases of local nuisance on private land; to order the owner of a private road to carry out specified roadworks; and to require the owner of adjoining land to carry out specified work.

The Municipal Council of Roxby Downs ("the Council") 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 maintain and improve the amenity of the 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.

## 2. DEFINITIONS

<b>Authorised Officer</b>	An authorised officer is a person who has been appointed by a government department or agency to perform certain compliance and enforcement duties. In Australia, authorised officer roles have been created under many Commonwealth and state Acts of Parliament.
<b>Order</b>	Notices and orders are enforcement options available to local councils in response to a statutory breach by individuals and/or companies. Orders and notices are written and enforceable directions that specify the terms and actions required to be complied with and undertaken by the alleged offender. There may be an administrative fee payable attached to the issuing of the order or notice depending on the relevant applicable legislation.

## 3. STATEMENT

Council takes a consultative and collaborative approach to resolve a local nuisance on private land prior to exercising its order making powers under the Act unless an emergency or immediate danger exists, in which case, Council may issue an order immediately.

Council applies the principles of social justice, ecological sustainability, accountability, transparent process and good customer service when attempting to resolve a local nuisance on private land.

All orders issued by Council under the *Local Government Act 1999* relate to the circumstances specified and comply with the requirements under the Act.

## 4. PURPOSE

This Policy sets out the steps Council will take in the making of Orders.

Orders can be issued by Council to instruct owners or occupiers of private land to take action required to resolve an issue as specified within the Act.

Unlike the blanket prohibition of certain activities that exists through by-laws, Orders are intended to apply, and be considered, on a case-by-case basis.

## 5. SCOPE

This policy applies to all owners or occupiers of land within the Municipal Council of Roxby Downs.

Section 259 of the Act 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 applies in respect of making Orders under the following sections of the *Local Government Act 1999*:

### 5.1. [Section 254 – Power to make Orders](#)

This section empowers the Council to order a person to do, or refrain from doing, a thing under certain circumstances.

This includes infringements specified for:

- Unsightly condition of property, hazards on lands adjoining a public place
- Animals that may cause a nuisance or hazard (includes birds and insects)
- Inappropriate use of a vehicle
- and other areas as detailed in **Appendix 1**.

#### 5.2. Section 216 – Power to order an owner of a private road to carry out specified roadworks

This section empowers the Council to order an owner of a private road to carry out specific roadworks to repair or improve the road condition such as for safety reasons (e.g. repairing pot holds or resurfacing a road if it has become unsafe for road users.

#### 5.3. Section 217 – Power to order Road Infrastructure Owners to Carry out Maintenance or Repair Work

This section empowers the Council to order an owner of infrastructure installed on a road to carry out specified maintenance or repair work.

#### 5.4. Section 218 – Power to order Adjoining Landowner to Carry out Works

This section empowers the Council to order an owner of land adjoining a road to take action to construct, remove or repair a crossing place from the road to the land.

#### 5.5. Section 299 – Power to order Vegetation Clearance

This section empowers the Council to require the owner/occupier of adjoining land to remove or cut back vegetation encroaching onto that land

#### 5.6. Local Nuisances

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 2016* will be dealt with in accordance with the procedures set out in that Act.

## 6. GUIDING PRINCIPLES

6.1. When considering making an order within the scope of this policy, Council's Authorised Officers consider the following factors when assessing the local nuisance on private land and determining the need to issue an order under the Act.

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
- Risk to health/safety of 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 evidence upon which Council may rely to exercise its order making powers
  - Number of complaints received in respect of the matter (if any)
- 6.2. Except in cases described in 6.3 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:
    - i. proposed action;
    - ii. terms of the proposed order (i.e. what it requires the person to do or refrain from doing);
    - iii. period within which compliance with the order will be required;
    - iv. penalties for non-compliance; and
    - v. reasons for the proposed action; and
- 6.3. 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 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.

## 7. AUTHORISED OFFICERS

Councils Authorised Officers:

- 7.1. may use consultative or collaborative processes to resolve a local nuisance on private land. Examples include but are not limited to:
- telephone calls;
  - personal visits;
  - notification letters; and
  - negotiation.
- 7.2. may determine to issue an order without any prior consultation or collaboration if the circumstances constitute or are likely to constitute:
- a threat to life; or
  - an immediate threat to public health or safety; or
  - an emergency situation.
- 7.3. ensure that orders are issued in the manner and form required under the Act and in accordance with Council policy and procedure

## 8. 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. Reference to this right of review is included in any order issued.

## 9. NON COMPLIANCE WITH AN ORDER OF THE COUNCIL

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) 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.

Failure to comply with an issued 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 Section 254 of the Act.

## 10. RESPONSIBILITIES AND DELEGATIONS

This policy will be enforced by Authorised Officers who have been appointed (in writing) by the Council under section 260 of the Act.<sup>1</sup>

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.

## 11. REVIEW AND EVALUATION

The effectiveness of this Policy will be reviewed and evaluated no less than every 3 (three) years.

Any 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.

## 12. AVAILABILITY OF THE POLICY

This policy will be available for inspection at Council Office located at 6 Richardson Place during ordinary business hours and published on the Council's website [www.roxbydowns.sa.gov.au](http://www.roxbydowns.sa.gov.au). Copies will be provided to interested parties upon request.

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<sup>1</sup> Authorised Persons have powers under section 261 of the Act to enforce breach of orders by way of expiation.

**APPENDIX 1**

**Local Government Act 1999**

*254—Power to make orders*

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

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>To do or to refrain from doing what?</b>	<b>In what circumstances?</b>	<b>To whom?</b>

**1. Unsightly condition of land**

*Refer to Local Nuisance and Litter Control Act 2016*

**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).	(1) A hazard exists that is, or is likely to become, a danger to the public.	(1) The owner or occupier of the land.
(2) To remove overgrown vegetation, cut back overhanging branches, or to remove a tree.	(2) The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place.	(2) The owner or occupier of the land.
(3) To remove or modify a flag or banner, a flagpole or sign, or similar object or structure that intrudes into a public place.	(3) The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place.	(3) The owner or occupier of the land.
(4) Where the public place is a road—to take action necessary to protect the road or to remove a hazard to road users.	(4) A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.	(4) The owner or occupier of the land.

**Examples—**

- 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.

**3. Animals that may cause a nuisance or hazard**

*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*

*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 likely to cause, a nuisance or a hazard to health or safety.*

*The owner or occupier of the land or any person apparently engaged in promoting or conducting an activity.*

*A person is the owner or occupier of land where an animal or animals are located which may cause or likely to cause, a nuisance or a hazard to health or safety or otherwise to become a pest.*

*The owner or occupier of the land or any person apparently engaged in promoting or conducting an activity*

*Examples:*

- The slaughtering of animals in a town or urban situation.
- Keeping an excessive number of insects, birds or other animals.
- Keeping bees in close proximity to other property.
- Keeping animals so as to generate excessive noise, dust, or odours, so as to 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 wasp's nest.

**4. Inappropriate Use Of Vehicle**

*To refrain from using a caravan or vehicle as a place of habitation.*

*A person is using a caravan or vehicle as a place of habitation in circumstances that—*

*The owner or occupier of the land or a person apparently occupying the caravan or vehicle.*

- (a) present a risk to the health or safety of an occupant; or*
- (b) cause a threat of damage to the environment; or*
- (c) detract significantly from the amenity of the locality.*



*216—Power to order owner of private road to carry out specified roadwork*

- (1) A Council may, by order in writing to the owner of a private road, require the owner to carry out specified roadwork to repair or improve the road.*
- (2) Divisions 2 and 3 of Part 2 of Chapter 12 apply with respect to—*
  - (a) any proposal to make an order; and*
  - (b) if an order is made, any order, under subsection (1).*

*218—Power to require owner of adjoining land to carry out specified work*

- (1) A Council may, by order in writing to the owner of land adjoining a road, require the owner to carry out specified work to construct, remove or repair a crossing place from the road to the land.*
- (2) Divisions 2 and 3 of Part 2 of Chapter 12 apply with respect to—*
  - (a) any proposal to make an order; and*
  - (b) if an order is made, any order, under subsection (1).*