



ORDER MAKING  
POLICY

Approved on: 11 October 2000  
Review on: 30 May 2009

Responsible Department/Officer	Administrator
Date of Adoption	11 October 2000
Review Date	30 May 2009
Related Procedures/Policies	
Reference to Strategic Plan	

## 1. INTRODUCTION

Roxby Downs Council ("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, and to maintain and improve the amenity of the locality.

The Act requires the Council to prepare and adopt policies on the application and use of its powers to make orders to resolve issues of nuisance and hazards.

This Order Making Policy establishes the principles and procedures that the Council will adhere to when exercising its powers pursuant to:

- (a) Section 254 of the Act, which empowers the Council to order a person to do (or refrain from doing) a certain thing (refer to Attachment 1); and
- (b) Section 299 of the Act, which empowers the Council to intervene on behalf of neighbouring property owners or occupiers to require vegetation to be cut back or removed.

This Policy does not apply to other circumstances provided in the Act or any other statutory instrument which specifically empowers the Council to make orders.

## 2. DELEGATION

The authority to issue orders in accordance with Sections 254 and 299 of the Act is delegated to the Administrator, who has the power to delegate to other Council staff.

In the event that the exercise of this delegated authority is to proceed to legal action as a result of non-compliance with the order, the matter will be referred to Council to determine if legal action is to proceed.

## 3. PRINCIPLES

In contemplating the exercise of its order making powers, the Council will consider the following principles which are central to the effective resolution of local nuisances and hazards on private land:

- (a) the degree of hazard or danger to the public;
- (b) the nature and degree of risk to the health and safety of the public;
- (c) the level of detraction from the amenity of the locality;
- (d) the seriousness of the matter;
- (e) issues of frequency, duration and previous incidences of the activity;
- (f) the impact of the activity;
- (g) level of public interest;

- (h) evidence available;
- (i) any other steps already taken or proposed by the Council to prevent or minimise the issue.

The Council will, wherever possible, take reasonable steps to resolve issues of local nuisance or hazards by negotiation with the person(s) involved before issuing an order (please refer to 4.9 below).

#### **4. PROCESS**

- 4.1 Before taking action to make an order, the person to whom the order will be directed will in the first instance be given notice in writing indicating that is proposed to issue an order unless the defect is remedied within a specified period
- 4.2 A similar letter will be sent to the owner of the land in the event that it is a different person
- 4.3 The letter will provide an opportunity for the person to:
  - (a) remedy the defect; or
  - (b) make representations to the person nominated to act on behalf of the Council on why the proposed action should not be taken.
- 4.4 In the event that the defect is remedied within the specified time frame, no further action will be taken.
- 4.5 In the event that the defect is not remedied and no appropriate mitigating factors have been brought to the attention of the Council by the time specified, an order will be issued and served on the offender and on the landowner
- 4.6 The order issued may be modified from the original written notice as a result of changing circumstances.
- 4.7 The time specified for compliance in the order may vary due to the nature of the defect, the potential for hazard or injury to others and the effect on the environment

4.8 Subject to 4.9 below, the following time frames will be used for the making of an order:

Offence	Written Notice Compliance Period	Order Compliance Period
Unightly condition of land	14 days	21 days
Hazards on land adjoining public places	Not less than 48 hours and not more than 14 days	Not less than 48 hours and not more than 21 days
Animals that may cause a nuisance or hazard	Not less than 24 hours and not more than 7 days	Not less than 24 hours and not more than 21 days
Inappropriate use of a vehicle	14 days	21 days

4.9 Reasonable steps will be taken to resolve cases of local nuisance by negotiation with the person involved before considering issuing an order, except in cases where: Council or an officer acting under delegated authority considers the circumstance or activity constitutes, or is likely to constitute: -

- (a) threat to life
- (b) an immediate threat to public health or public safety
- (c) an emergency situation

In such circumstances the Council may, in accordance with Section 255(12) of the Act, make an order requiring immediate compliance without undertaken the above notification process.

## 5. RIGHTS OF REVIEW

An order issued by the Council pursuant to Section 254 or 299 of the Act will include a statement that sets out the rights of the recipient to apply for a review of that order under the Act. The statement will include the following prescribed information:

- (a) that it is possible for the person to whom the order is directed to appeal against the order;
- (b) that an application for review is to be made to the District Court within 14 days after service of the order;
- (c) that operation of the order continues pending the determination of an application for review unless the District Court, or the Council, makes an interim order suspending the operation of the order;
- (d) that the District Court has the power, if it is satisfied that it appropriate and just in the circumstances, to vary or set aside the order on an application for review; and
- (e) a warning that if the order is not complied with within the time fixed for compliance, or within 14 days after the completion of any review, then the Council may take the action required by the order (subject to the outcome of any review) and recover its reasonable costs and expenses incurred in taking such action.

## **6. NON COMPLIANCE**

If the requirements of an order are not complied with, within the time fixed for compliance, and where there is no extenuating circumstance or where no application for review has been submitted, the following actions will occur:

- 6.1 an officer, acting under delegated authority, will issue an order for the corrective action to be taken either by Council staff or by a person or company acting on Council's behalf, in accordance with Section 257;
- 6.2 any work or corrective action will be carried out efficiently, effectively and expeditiously;
- 6.3 an account for the costs and expenses incurred by Council will be submitted to the person who failed to comply with the order fixing a period for payment of not less than 28 days;
- 6.4 in the event that the account is not paid within the period allowed:
  - (a) interest will accrue on the unpaid amount at the prescribed rate;
  - (b) a charge may be placed over the land to which the order relates; and
  - (c) the debt may be placed in the hands of Council's debt recovery service.

## **7. PENALTIES**

Non-compliance with an order of the Council will constitute a breach of the Act and the person to whom the order is directed may incur statutory penalties as provided for in the Act. Section 258 of the Act provides for a maximum penalty of \$750 and an expiation fee of \$105 for failure to comply with an order.

## **8. COUNCIL ENDORSEMENT OF THE POLICY**

This Policy was endorsed by Council on [ X ] 2007. Council endorsed 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, the Northern Sun on [X] 2007. Submissions received were considered and taken into account in preparing this 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.

## **9. AVAILABILITY OF THIS POLICY**

This Policy will be available for inspection (without charge) at Council's principal office and libraries during ordinary business hours. Copies will be provided at no charge to interested parties upon request at:

Council Offices  
Richardson Place  
Roxby Downs  
(08) 86710010

A person is entitled, on payment of a fixed fee by the Council, to a copy of this Policy.

This Policy is available on Council's website.

## 10. CIRCUMSTANCES TO WHICH ORDER MAKING POLICY WILL APPLY

"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" (Section 254 Local Government Act 1999)

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?
<p><b>1.Unsightly condition of land</b></p> <p>To take action considered by the council to be necessary to ameliorate an unsightly condition.</p>	<p>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.</p>	<p>The owner or occupier of the land.</p>
<p><b>2.Hazards on lands adjoining a public place</b></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><i>Examples</i></p> <p>-To fill an excavation, or to prevent drainage of water across the road.</p> <p>-To construct a retaining wall or to remove or modify a fence.</p> <p>-To fence land to prevent the escape of animals.</p> <p>-To remove a structure or vegetation near an intersection.</p>	<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>

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
<p><b>3. Animals that may cause a nuisance or hazard</b></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>(1) The slaughtering of animals in a town or urban situation.</p> <p>(2) Keeping an excessive number of insects, birds or other animals.</p> <p>(3) Keeping bees in close proximity to other property.</p> <p>(4) Keeping animals so as to generate excessive noise, dust or odours, or to attract pests or vermin.</p> <p>(5) 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>(6) Failing to deal with a wasp's nest.</p>	<p>The owner or occupier of land or any person apparently engaged in promoting or conducting an activity.</p>
<p><b>4. Inappropriate use of vehicle</b></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>