

Order Making Policy

Policy Reference Number	5977955
Responsible Department	Infrastructure, Planning & Sustainability Services
Related Policies	Nil
Related Procedures	Nil
Date of Initial Adoption	04 March 2002
Last Reviewed by Council	16 April 2024

1. Purpose

Campbelltown City Council is responsible for providing the governance and management of its area at a local level. In particular it is the function of the Council to provide for the welfare, well-being and interests of the members of its community and to take measures to protect the area from hazards and to improve amenity.

To fulfil its functions, Council has a range of statutory powers. These powers enable the Council to exercise its regulatory functions by making Policies, Orders and By-laws.

Council maintains an Order Making Policy in relation to the exercise of its powers pursuant to Part 2 of Chapter 12 of the Act (*Local Government Act 1999*), to promote the health, safety and well-being of the community. This Policy sets out the matters about which Orders will be made and the relevant principles, procedures and non-compliance actions that will be applied.

2. Power to Make the Policy

Section 259 of the Act requires Council to prepare and adopt policies concerning the operation of Part 2 of Chapter 12 of the Act, which deals with order making.

This Policy will apply to the matters set out in Section 254 of the Act which provides that Council may order a person to do or refrain from doing a thing in particular circumstances, as specified in the table included within that section of the Act.

In accordance with the requirements of the Act, the Policy also applies in relation to orders issued by Council pursuant to Section 216 (power to order the owner of private road to carry out specified roadwork) and Section 218 (power to require owner of adjoining land to carry out specified work).¹

The exercise of Council's order making power in accordance with this Policy and the relevant law co-exists with the Council's other regulatory powers. For example, the Council has the power pursuant to the Act to make and enforce by-laws in certain circumstances and to enforce compliance with the requirements of the Act and a range of other legislation.

¹ See Sections 216(2) and 218(2) of the Act.

3. Strategic Plan Link

This Policy has the following link to Council's Strategic Plan 2024:

- Leading Our People (Goal 5)

4. Principles

In each situation in which the Council is considering making an Order to require a person to act or to refrain from acting, the Council will, within its capacity to do so, investigate and consider (to the extent that is relevant and necessary) the following circumstances:

- the severity of the incident or circumstance;
- the hazard or danger posed to the community;
- the risk to health and safety of the community;
- detraction from the amenity of the locality;
- the number of occurrences of the activity or incident;
- the impact of any previous compliance or other action taken to deal with the activity or incident;
- the significance of the breach, any other public interest or well-being considerations; and
- the availability of other, more appropriate resources of the Council.

To this end, Council will apply the principles of social justice, ecological sustainability, an accountable and transparent process and a high level of customer service when undertaking to resolve an order making issue in relation to this Policy.

5. Definitions

Nil

6. Policy

6.1 Matters to which the Policy Applies

The matters to which this Policy applies are set out below. These matters are stated in general terms with particular examples for illustration. These examples are not intended to be an exhaustive list of the circumstances in which the Policy will apply. They are included to assist the community to understand the purpose and intent of this Policy and the way in which it will be applied.

6.1.1 Power to order an owner of a private road to carry out specified roadwork

The Council may make an Order directing the owner of a private road to carry out specific roadwork to repair or improve the condition of the road.. For example, the owner of the road may be asked to repair pot holes or resurface a road if it has become unsafe for, or a hazard to, road users.

6.1.2 Power to require owner of adjoining land to carry out specified work: Section 218

The Council may make an Order to direct the owner of land adjoining a road requiring that they take action to construct, remove or repair a crossing place (driveway) from the road to the land. For example, an owner may be directed to construct a crossing place in accordance with an engineering specification of the Council, or repair a cracked or broken crossing place.

6.1.3 Hazards on Land Adjoining a Public Place (includes Council streets and roads): Section 254

The Council may make an Order directing the owner or occupier of land to take action to deal with hazards on lands adjoining a public place.

Examples of relevant circumstances include:

- a fence, or lack of fencing on land adjoining any road, community land or public place is creating a hazard or likely to become a danger to the public;
- where there are overhanging branches, overgrown vegetation or structures on land adjoining a public place which obstruct a public place or create a danger to persons using a public place;
- where there is inadequate drainage of water from land which is causing water to drain across a road;
- where a flag, banner, flagpole or sign intrudes into a public place.

6.1.4 Inappropriate use of a Vehicle: Section 254

The Council may make Orders directing an owner or occupier of land or a person apparently occupying a caravan or vehicle located on land and which is used as a place of habitation, to refrain from using that caravan or vehicle for the purposes of habitation.

Examples of relevant circumstances include:

- where use of a caravan or vehicle for habitation presents a risk to the health and safety of an occupant;
- use of the vehicle as habitation causes a threat of damage to the environment;
- use of the vehicle as habitation detracts significantly from the amenity of the locality.

6.2 Actions to be taken – if not urgent

Before making an Order, unless the circumstances are urgent, the Council will take the following actions:

6.2.1 Give the person to whom an Order is intended to be directed a notice in writing stating the:-

- proposed action;
- terms of the proposed Order (what Council requires the person to do or refrain from doing);

- period within which compliance with the order would be required;
- reasons for the proposed Order; and
- penalties for non-compliance with an Order (if issued)

6.2.2 The Council will invite the person to whom the Order is intended to be directed to make representations, within a specified time, as to why the proposed action should not be taken.

6.2.3 The Council will take reasonable steps, within available resources, to resolve cases of local nuisance by negotiation and agreement before issuing an Order, except in cases of threat to life, an immediate threat to public health or safety or an emergency situation.

This does not apply to local nuisances within the meaning of the *Local Nuisance and Litter Control Act 2016*, which will be dealt with in accordance with the procedures set out in that Act.

6.2.4 Where notice of a proposed Order has been given to a person who is not the owner of the relevant land, the Council must take reasonable steps to serve a copy of the notice on the owner of the land.

6.2.5 After considering the representations made by the person to whom notice of the Order is directed, the Council may:

- 6.2.5.1 make an Order in terms of the original proposal; or
- 6.2.5.2 make an Order with modifications of the terms of the original proposal; or
- 6.2.5.3 determine not to proceed with making an Order;

6.2.6 An Order must be served by the Council on the person to whom it is addressed. If the person to whom the notice and Order are addressed is not the owner of the land, the Council must take reasonable steps to serve a copy of the notice and Order on the owner of the land.

6.2.7 Service of an Order will be by a method or methods set out in Section 279 of the Act.

6.2.8 The Council may vary any Order or revoke any Order as it considers fit.

6.3 Action to be taken – if urgent

6.3.1 In accordance with Section 255(12) of the Act, the Council will proceed to make an order without negotiation or notice where the 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.

6.3.2 In such urgent circumstances, the Council may require immediate compliance with an Order despite the requirements of Section 255(6)(a) of the Act.

6.4 Rights Of Review

Before taking action to enforce an Order, unless the circumstances are urgent, the Council will take into consideration the following:

- 6.4.1** That the person to whom an Order is directed may apply to the South Australian Civil and Administrative Tribunal (Tribunal) for a review of the Order within 14 days after service of the Order.
- 6.4.2** That subject to Clause 6.3.1 of this Policy the operation of an Order continues pending the determination of any application for review.
- 6.4.3** That the Tribunal may, if it thinks fit, make an interim order suspending the operation of an Order.
- 6.4.4** That upon review, the Tribunal may, if satisfied that it is appropriate and just in the circumstances, vary or set aside an Order.

6.5 Action on Non-Compliance with an Order

- 6.5.1** The Council may, if the requirements of an Order are not complied with within the time specified in the Order, itself carry out the requirements of an Order.
- 6.5.2** The reasonable costs and expenses of the Council in carrying out the requirements of an Order may be recovered by the Council from the person who failed to comply with the Order as a debt.
- 6.5.3** Where an amount is recoverable from a person by the Council, the Council may give that person notice in writing to pay the amount within no less than 28 days from the date of the notice. If the person fails to pay the amount that person is liable to pay interest and, if the person is the owner of the land to which the Order relates, the Council may, in accordance with Section 257(5)(b) and Schedule 6 of the Act, impose a charge on the land for the unpaid amount and interest.

6.6 Non-compliance with an Order of the Council

Non-compliance with an Order of the Council will constitute a breach of the Act and is an offence for which a person may be subject to prosecution or given an expiation notice. The maximum penalty for non-compliance with an Order and applicable expiation fee is set out in Section 258 of the Act.

All Orders of the Council will include the information regarding penalties for non-compliance with that particular Order, and will advise of the applicable appeal rights.

7. Review & Evaluation

Within twelve months of each new Council term, Council will review this policy. Following this initial review, this policy will be reviewed at least biennially by Staff with minor administrative adjustments being approved by the Chief Executive Officer.

8. Availability of the Policy

Copies of this Policy will be available at Council's principal office during ordinary business hours and at Council's website www.campbelltown.sa.gov.au.