

	<h2 style="margin: 0;">Order Making Policy</h2> <p style="margin: 0;">Policy No. ENVPOL 04</p>	<b>Version No:</b>	2.0
		<b>Responsible Officer/s</b>	<b>Governance Officer</b>
		<b>Issued:</b>	<b>07 Aug 2000</b>
		<b>Next Review:</b>	<b>May 2023</b>

## 1. Introduction

Section 254 of the *Local Government Act 1999* (the Act) provides Council with the power to make orders under certain circumstances.

The District Council of Grant (Council) is committed to using the order making powers available to it under the Act 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. This Policy sets out the steps Council will take in the making of orders.

Council may make orders in relation to specified infringements, in accordance with the Act. Orders may require a person to do or to refrain from doing certain actions. The specified infringements are:

1. Unsightly condition of land.
  2. Hazards on lands adjoining a public place.
  3. Animals that may cause a nuisance or hazard (includes birds and insects).
  4. Inappropriate use of vehicle.
- (Refer Attachment 1)

## 2. Scope

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, which deals with the making of orders.

This Policy will apply to those circumstances listed in Section 254 of the Act which states that Council may order a person to do or refrain from doing a thing under certain circumstances, as specified in Attachment 1.

This Policy will also apply to the following sections of the Act:

- Section 216 Power to order the owner of a private road to carry out specified roadwork to repair or improve the road.
- Section 217 Power to order the owner of a structure or equipment (including pipes, wires, cables, fittings and other objects) installed in, on, across, under or over a road to carry out specified work by way of maintenance or repair or to move the structure or equipment to allow the Council to carry out roadwork.
- Section 218 Power to order the owner of land adjoining a road to carry out specified work to construct, remove or repair a crossing place from the road to the land.
- Section 262 Power to order an offender who engages in conduct that is a contravention of the Act or a by-law under the Act to stop the conduct and to take specified action to remedy the contravention.

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### 3. Guiding Principles

In making orders within the scope of this policy, Council will consider the following principles, which are considered central to effective resolution of local nuisances on private land:

Each case for the possible use of the order making powers will be considered on its merits. Factors that Council will consider 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
- 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?
- What evidence is available?
- Offenders attitudes?
- Number of complaints received in respect of the matter
- Implications of not taking any action

### 4. Process and Procedure

Except in the case of an emergency described below, Council will take reasonable steps, within available resources, to resolve cases of local nuisance by negotiation and agreement before issuing an order. This may include a personal approach by Council officers and/or an informal warning letter prior to commencing the formal order making process.

Except in the case of an emergency described below, before making an order Council will give notice of its intention to make an order in accordance with section 255 of the Act by 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 (i.e. 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; and
- reasons for the proposed action; and
- inviting the person notified of the opportunity to give reason/s, within a specified time, why the proposed action should not be taken.

Council will proceed to make an order without negotiation or notice, in accordance with section 255(12) of the Act 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.

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## 5. Review Rights

Pursuant to section 256 of the Act any person to whom an order is issued (including an order issued under sections 254, 216, 217 or 218 of the Act) has a right to appeal against the order. Any such appeal must be lodged within 14 days after service of the order. The Council will ensure that reference to this right of review is included in any order issued.

## 6. Non-compliance with an Order

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.

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.

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.

Where an order is issued under section 217 of the Act, 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 to the owner; and
- The owner is guilty of an offence and liable to a maximum penalty not exceeding \$5,000.

## 7. Responsibilities and Delegations

7.1 The authority to issue orders in accordance with Section 254 of the Act is delegated to all authorised persons appointed by the Council pursuant to Section 260 of the Act, as specified in the record of Delegations of Powers of the Council.

7.2 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, pursuant to Section 257 of the Act, the matter will be referred to the Chief Executive Officer or the Council to determine if legal action is to proceed.

7.3 Council's Governance Officer is responsible for ensuring the requirements of this Policy are met.

## 8. References:

Local Government Act 1999

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## 9. Review

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.

The effectiveness of the Policy will be reviewed and evaluated every four (4) years, within 12 months of a general election (or on significant change to legislation or other matters which could affect this policy)..

<b>Action</b>	<b>Date</b>	<b>Minute Reference</b>
Adopted by Council	7 August 2000	00239.5
Reviewed	3 September 2001	01245.9
Reviewed	19 August 2002	02242.6
Reviewed	8 October 2003	03313.7
Reviewed	20 June 2007	07191.5
Amended	20 June 2011	11164.4 & 11161.3
Reviewed	2 February 2015	15015.1
Amended	24 June 2019	19078.5

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## Attachment 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.

<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>
<hr/>		
<b>2. Hazards on lands adjoining a public place</b>		
(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.

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<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>
(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.

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<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>

**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.

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