



Policy Title: ORDER MAKING POLICY

Reference number:	<i>Not required at this stage</i>
Responsible department and position:	<i>Cate Atkinson</i>
Relevant delegations:	<i>All officers authorised under delegation</i>
Date adopted:	<i>August 2002</i>
Review date:	<i>August 2003</i>

## PART A: POLICY

### 1. POLICY STATEMENT

The City of Playford 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, and to improve the amenity of the locality.

This policy is supported by procedures, which set out the steps Council will take in the making of orders.

### 2. PRINCIPLES

**2.1** To ensure that 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 incident.
- Hazard/danger posed to the community.
- Risk of health/safety of the community.
- Detraction from the amenity of the locality.
- Repeated occurrence of the activity/incidence (eg duration, previous offences)
- Impact of any previous actions to overcome the problem.
- Is the breach significant/substantial?

- Are there any public interest issues?
- Any reflection on Council's image.
- What evidence is available?
- Offender's attitude.

### 3. BACKGROUND

This policy was developed following amendment to the Local Government Act in 1999. The new act expanded Council's order making power in lieu of the ability to proclaim By-Laws. In providing the power to issue orders the Act requires Council under Section 259 to consider its Order making Policy, hence Council needs such a policy. The current policy has been re-formatted with no change to its primary content and replaces the initial policy approved by Council in July 2000.

### 4. POLICY OBJECTIVES

To ensure that the correct procedures are used when issuing orders under Section 254 of the Local Government Act 1999. Section 259(8) of the Act prescribes that Council must refer to the Order Making Policy, prior to the issue of an order.

### 5. LEGISLATION AND REFERENCES

This policy developed pursuant to the provisions of Section 259 of the Local Government Act 1999 will apply to those circumstances listed in Section 254 of the Local Government Act 1999. This section states that Council may order a person to do or refrain from doing a thing under certain circumstances, as specified in the table included in that section of the Act and detailed below.

<b>Column 1 To do or to refrain from doing what?</b>	<b>Column 2 In what circumstances?</b>	<b>Column 3 To whom?</b>
<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>(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</p>	<p>(1) The owner or occupier of the land.</p> <p>(2) The owner or occupier of the land.</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> <ul style="list-style-type: none"> <li>· To fill an excavation, or to prevent drainage of water across the road.</li> <li>· To construct a retaining wall or to remove or modify a fence.</li> <li>· To fence land to prevent the escape of animals.</li> <li>· To remove a structure or vegetation near an intersection.</li> </ul>	<p>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>(3) The owner or occupier of the land.</p> <p>(4) The owner or occupier of the land.</p>
<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</p>	<p>The owner or occupier of land or any person apparently engaged in promoting or conducting an activity.</p>

	<p>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><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>

## 6. PROCEDURES

**6.1** Except in cases described in 2 below, appropriate measures will be taken prior to making an order, including:

- a) Giving the person to whom an order is intended to be directed, a notice in writing stating the:
- Proposed action to be taken by the Council.
  - Terms of the proposed order (what the order will require the person to do or refrain from doing).
  - Period within which compliance with the order will be required.
  - Penalties for non-compliance.
  - Reason for the proposed action.

b) Inviting the person so notified, of the opportunity to give reason(s), within a specified time, why the proposed action should not be taken.

**6.2** Reasonable steps will be taken to resolve cases of local nuisances by negotiation with the person involved, before considering issuing an order under Section 254 of the Local Government Act, 1999, except in cases of where Council considers the circumstances or activity constitutes, or is likely to constitute:

- A threat to life.
- An immediate threat to public health or public safety
- An emergency situation.

### **6.3 Penalties.**

Section 258 of the Act provides for a maximum penalty of \$750 and an expiation fee of \$105 for failing to comply with an order issued under Section 254 of the Act.

### **6.4 Review and Evaluation.**

The effectiveness of this policy will be reviewed and evaluated annually.