REGIONAL COUNCIL OF GOYDER

GOYDER South Australia's Heartland	***ORDER MAKING POLICY***	**Section:**	Governance
		Version No:	3.0
		Adopted:	Feb 01
		Revised:	Sept 26
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		Responsibility:	CEO

1. INTRODUCTION

The Regional Council of Goyder is committed to using the order making power available to it under the *Local Government Act 1999* ('the Act') in such a way as to facilitate a safe and healthy environment, to improve the amenity of a 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 and sets out the steps Council will take in the making of orders.

2. SCOPE

Section 259 of the Act requires each Council to take reasonable steps to prepare and adopt policies concerning the operation of the Part 2 of the Chapter 12 of the Act. Part 2 deals with the making of orders.

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

This policy will also apply to;

- Section 216 Power to order owner or private road to carry out specified roadwork
- Section 217 Power to order owner of infrastructure installed on road to carry out specified maintenance or repair work
- Section 218 Power to require owner of adjoining land to carry out specified work

Local Nuisance (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 will be dealt with in accordance with the procedures set out in that Act.

3. GUIDING PRINCIPLES

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

Each case for the possible use or 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 (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
- Any there any public interest issues
- Whether there is sufficient evidence upon which Council may rely to exercise its order making powers
- Offenders attitudes
- Number of complaints received in respect of the matter (if any)

4. PROCESS AND PROCEDURE

Except in the case of an emergency described below, **Council will take reasonable steps, within available resources, to resolve issues by negotiation and agreement before issuing an order.**

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) where council considers the circumstance or activity constitutes, or is likely to constitute:-

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

5. REVIEW RIGHTS

Pursuant to section 256 any person to whom an order is issued (including an order issued under sections 216, 218 or 254 of the Act) has a right to appeal against the order. Any such appeal much be lodged within 14 days of that persons receipt of the order. Council will ensure that any 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 the 14 days after the determination of the review) Council may (subject to the outcome of any review) will 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 maximum penalty of $2,500 and an expiation fee of $210 for failure to comply with an order issued under the Act.

7. RESPONSIBILITIES AND DELEGATIONS

Council's Policy will be enforced by Authorised Officers who have been appointed (in writing) by the Council under section 260 of the Act.

Council may also choose to delegate the power to issue orders under sections 216, 218 and 254 of the Act to Council staff, in which case Council will ensure appropriate delegations are in place.

8. COUNCIL ENDORSEMENT OF THE POLICY

Future amendment or alteration of this Policy, or substitution of a new Policy, will be subject to 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. RECORDS

All records should be treated in accordance with Local Government GDS40.

10. REVIEW

This document shall be reviewed by the Council every two (2) years (or on significant change to legislation or aspects included in this policy that could affect the health and safety of workers).

11. REVIEW HISTORY

Document History	Version No:	Issue Date:	Description of Change:
	1.0	20/02/2001	Adopted
	2.0	16/02/2016	Reviewed with changes refer NCOR-22016-482
	3.0	20/02/2018	Reviewed with changes refer minute 022/18
	3.0	16/03/2021	Reviewed with no changes refer minute 034/21
	3.0	20/08/2024	Reviewed refer minute 136/24
	3.0	15/09/2026	Reviewed refer minute 247/26

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 in column 2 of the table exist and the person comes within the description opposite it in column 3 of the table.

Column 1 **To do or to refrain from doing what?**	**Column 2** **In what circumstances?**	**Column 3** **To whom?**
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 where 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 is 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. *Examples* - *To fill an excavation, or to prevent drainage of*	(4) A situation exists that is causing, or is likely to cause damage to the road or hazard to road users.	(4) The owner or occupier of the land.

water across the road - *To construct a retaining wall or to remove or modify a fence* - *To fence land to prevent animals from escaping* - *To remove a structure or vegetation near an intersection*		
3. Animals that may cause a nuisance or a hazard. *Refer to the Local Nuisance and Litter Control Act 2016*		
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 the circumstances that; (a) Present a risk to the health or safety of the occupant (b) Cause a threat of damage to the environment; or (c) Detract significantly from the amenity of the locality	The owner or occupier of the land or a person apparently occupying the caravan or vehicle.

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

216 – Power to order owner of a 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
  (b) If an order is made, any order
  Under subsection (1)

217- Power to order owner of infrastructure on road to carry out specified maintenance or repair work;

(1) A council may by order in writing to the owner of a structure or equipment (including pipes, wires, cables, fittings and other objects) installed in, across, under or over a road, require the owner;
  (a) To carry out specified work by way of maintenance or repair; or
  (b) To move the structure or equipment in order to allow the council to carry out roadwork.

(2) If the order is not complied with within a reasonable time fixed in the order –
   (a) The council may itself take the action required by the order and recover the cost of doing so as a debt from the owner; and
   (b) The owner is guilty of an offence and liable to a penalty not exceeding $5,000
(3) Subsection (1) and (2) do not apply to the owner of electricity infrastructure, public lighting infrastructure or gas infrastructure if the Commission has determined, on application by the owner, that there are reasonable grounds for not requiring the owner to take the action specified in the order.
(4) In this section-
   Commission means the Essential Services Commission established under the *Established Services Commission Act 2002;*
   Electricity infrastructure has the same meaning as the *Electricity Act 1996*;
   Gas infrastructure has the same meaning as in the *Gas Act 1997;* but does not include a transmission pipeline with the mean of the *Petroleum Act 2000;*
   Owner of a structure or equipment includes a lessee or licensee;
   Public lighting infrastructure has the same meaning as in the *Electricity Corporations (Restructuring and Disposal) Act 1999.*

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 the 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).