



DRAFT Local Government Act - Order Making Policy

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Department:	City Development	Division:	Environmental Health & Safety
Function:	5 - Environmental Management	Responsible Officer:	Manager, Environmental Health & Safety

A - PREAMBLE

Power to Make Orders

1. The *Local Government Act 1999* requires the Council to prepare and adopt a policy for the operation of its order-making power. The policy is subject to public consultation, review and evaluation.
2. This Policy will apply to the matters set out in the *Local Government Act 1999* including:
 - a. Section 254 which empowers the Council to order a person to do or refrain from doing a thing under certain circumstances, namely:
 - i. Prevent or eliminate hazards on lands adjoining a public place
 - ii. Prevent the inappropriate use of vehicle (as a place of habitation).
 - b. Section 216 which empowers the Council to order the owner of a private road to carry out specified roadwork to repair or improve the road.
 - c. Section 218 which empowers the Council to order the owner of adjoining land to carry out specified work to construct, remove or repair a crossing place from the road to the land.
3. This Policy does not apply to other circumstances provided for in the *Local Government Act 1999* and other South Australian Legislation that specifically empower the Council to make orders, when appropriate and as the need arises.
4. The exercise of the Council's order-making power, in accordance with this Policy and relevant statutes, co-exists with the Council's other regulatory powers. For example, the Council has power to make and enforce by-laws in certain circumstances and to enforce compliance with the requirements of the *Local Government Act 1999* and a range of other legislation.
5. This policy is also to be read in conjunction with Councils Enforcement Policy.

B - SCOPE

1. This policy applies to all owners or occupiers of lands within the City of Salisbury Council boundaries.

Matters to Which Policy Applies

1. The matters to which this Policy applies are set out in Section 254 and Section 216 and 218 of the *Local Government Act 1999*.

Section 254:

2. The following table is an extract from the Act. The 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.

Section 254 Power to make orders, states:

254. 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.

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
1. Hazards on lands adjoining a public place		
(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.
(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 (1) To fill an excavation, or to prevent drainage of water across the road. (2) To construct a retaining wall or to remove or modify a fence. (3) To fence land to prevent the escape of animals. (4) To remove a structure or vegetation near an intersection.	(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.

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
2. Inappropriate use of vehicle		
To refrain from using a caravan or vehicle as a place of habitation. Refer Attachment A for further information and guidelines.	A person is using a caravan or vehicle as a place of habitation in circumstances that (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.	The owner or occupier of the land or a person apparently occupying the caravan or vehicle.

Section 216

Section 216 Power to order owner of private road to carry out specified roadwork, states:

- a. (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.

Section 218

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

- a. (1) A council may, by order in writing to the owner of 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.

C – POLICY PURPOSE/OBJECTIVES

1. The City of Salisbury ("the Council") is responsible to provide for the government and management of its area at a local level. In particular it is the function of the Council to provide for the welfare, wellbeing and interests of the members of the community and to take measures to protect the area from hazards and to improve amenity.
2. To fulfill its functions, the Council has a range of statutory powers. These powers enable the Council to exercise its regulatory functions by making policies, orders and by-laws. The Council has resolved to develop an order-making policy in relation to the exercise of the Council's powers pursuant to Part 2 of Chapter 12 of the *Local Government Act 1999*, to promote the health, safety and well-being of our community and good governance. This policy sets out the matters about which orders will be made. The relevant principles, procedures and penalties that will be applied are also set out in this policy.

D - DEFINITIONS

1. "The Act" means the Local Government Act 1999

E - POLICY STATEMENT

Principles

1. The Council will apply the following principles in the exercise of its powers to make orders:
2. In each situation in which the Council is considering making an order to require a person to act or to refrain from acting, within its powers to do so, the Council will 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 actions to deal with the activity or incident;
 - The significance of the breach, any other public interest or wellbeing considerations;
 - The availability of a more appropriate response by the Council.

Procedures to be followed

1. The procedures to be followed in the issuing an order must be in accordance with the requirements of Section 255 of the Act. Before making an order, unless the circumstances are urgent, the Council will take the following actions:
2. 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;
 - Period within which compliance with the order would be required;
 - Reasons for the proposed order;
 - Invite the person notified to make representations, within a specified time, as to why the penalties for non-compliance;
 - Penalties for non-compliance.
3. The Council will take reasonable steps, within available resources, to resolve cases requiring an order 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.
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.
5. After considering the representations made by the person to whom notice of the order is directed, the Council may
 - make an order in terms of the original proposal or
 - a modification of the original proposal or
 - Determine not to proceed with making an order.
 - the council is not required to give notice of an order with modifications
6. Upon issuing an order the Council may:
 - include two or more orders in the same instrument, or
 - direct two or more persons to do something specified in the order jointly
7. An order that is issued must:
 - specify a reasonable period within which the order must be complied with, and
 - state the reasons for the order.

8. 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.
9. Service of orders is subject to the requirements of the Local Government Act Section 279— Service of documents by councils etc.
10. If the land is owned or occupied by more than one person, the order is not invalid merely because:
 - It is not directed to all the owners, and
 - an owner or occupier who complies with an order may recover a fair contribution from the other owners or occupiers
11. The Council may at the request or agreement of the person to whom the order is directed, vary any order or may on its own initiative, revoke an order if satisfied it is appropriate to do so.
12. If the Council in particular case considers:
 - An activity constitutes or is likely to constitute a threat to life or public health or safety, or
 - An emergency situation exists,It may
 - Proceed to make an order without giving notice, and
 - Require immediate compliance with the order.

Rights of Review

1. In accordance with Section 256 of the Act an order must include a statement setting out the rights of review. The review process includes:
 - The person to whom an order is directed may apply to the District Court for a review of the order within 14 days after service of the order.
 - The operation of an order continues pending the determination of an application for review, unless the order is suspended in accordance with the next clause.
 - The District Court or the Council may, if it thinks fit, make an interim order suspending the operation of an order.
 - Upon review, the District Court may, if satisfied that it is appropriate and just in the circumstances, vary or set aside an order.
 - The District Court may be constituted of a magistrate.

Action on Non-Compliance with an Order

1. Section 257 of the Act provides details of action to be taken in the case of non-compliance of the order.
2. If the requirements of an order are not complied with in 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.
3. The Council or an employee of Council or another person authorized by Council, may, if the requirements of an order are not complied with within the time specified in the order, carry out the requirements of an order.
4. 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.

5. 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.
6. 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 impose a charge on the land for the unpaid amount and interest.
7. No civil liability attaches to a council, an employee of a council, or a person acting under the authority of a council, for anything done by the council, employee, or person under this section.

Penalties

1. Non-compliance with an order of the Council will constitute a breach of Section 258 of the Act and a person may incur statutory penalties provided for in the Act. The maximum penalty is \$2500. The Expiation fee is \$210. All orders of the Council will include the specific statutory penalty relevant to a breach of that particular order, and will advise of any applicable appeal rights.

Council Endorsement of the Policy

1. Any amendment or alteration to the Policy or a substitution of a new Policy is subject to public consultation provisions in Section 259(2) of the Local Government Act 1999. Council must, before adopting an amendment to a policy, commence public consultation unless the Council determines that the amendment is of only minor significance.

Availability of the Policy

1. This Policy will be available for inspection at the Council's principal office during ordinary business hours. Copies will also be provided to interested members of the community upon request, and upon payment of such fee (if any) as the Council may, in its discretion, fix.

F - LEGISLATION

1. *Local Government Act 1999*, Section 254 to 259 inclusive, Section 216 and Section 218

H - ASSOCIATED PROCEDURES

1. Responsibility for Order Making Provisions, Section 254 *Local Government Act 1999* (Refer to attachment B)
2. City of Salisbury Enforcement Policy

Document Control

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ATTACHMENTS

Attachment A: Guideline for the Operation of Section 254 of the Local Government Act 1999

Pertaining to the “Inappropriate use of a Vehicle”

The Council may make orders directed to an owner or occupier of land or a person apparently occupying a caravan or vehicle, which is used, as a place of habitation, to refrain from using the caravan or vehicle as a place of habitation if the following circumstances exist:

- 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.

Council has developed a list of guidelines that can be used by residents to assess their compliance with the above circumstances.

Where use of a caravan or vehicle for habitation presents a risk to the health and safety of an occupant

- Caravans or vehicles used for habitation must be of a suitable standard with regards to, structural soundness, cleanliness and hygiene.
- The caravan or vehicles, walls, ceiling and floors must be constructed of adequate and sound materials, and be weatherproofed.
- There has to be adequate provision for lighting and natural ventilation.
- The fixtures, fittings and furniture must be clean and sanitary.
- Connections to a mains power supply must be in accordance with the provisions of the relevant power authority.
- The number of occupants must not exceed the recommended capacity of the van
- Adequate sanitary facilities and ablution facilities (toilet and shower) must be provided for the occupant.

Please note that the sanitary facilities and ablution facilities on the caravan or vehicle must not be used unless adequately connected to sewer. (Approval may be required for this)

Use of the vehicle as habitation causes a threat of damage to the environment

- Areas of concern may include any impact on the environment including, air, water, soil or noise pollution, including;
- The improper discharge of solid or liquid wastes from the caravan or vehicle
- The emission of any offensive materials or odours from the caravan or vehicle
- The emission of excessive noise from the caravan or vehicle, or occupants

Use of the vehicle as habitation detracts significantly from the amenity of the locality.

- Areas of concern that could be considered to detract significantly from the amenity of the locality, include:
- Locating the caravan or vehicle in the front yard
- Locating the caravan or vehicle up against a neighbouring fence, (a minimum distance of 600mm should be maintained between the caravan and fence, or 900mm if there is a window in the caravan that faces the neighbouring property.
- An unsightly appearance of the caravan or vehicle

- Note: Some allotments may not be suitable to accommodate a caravan or vehicle due to the size and shape.

Development Controls

In situations where;

- Occupancy of a caravan or vehicle for a period of greater than 12 months, or
- Where the subject land does not presently contain a lawfully habitable dwelling,
- Formal Development Approval is required from the Council

Other Provisions

The above examples are not to be considered to be absolute. Council may take other things into consideration when investigating an “Inappropriate use of a vehicle”. Each assessment will take into consideration relevant local factors and circumstances.

Further Information

If you require further information regarding the above matters please contact Council’s City Development Department on 84068221.

Attachment B: - Responsibility for Order Making Provisions

Section 254 Local Government Act 1999

Order Provision	Details	Primary Responsibility	Other Information
3.1 Hazard on Land Adjoining Public Place	A dangerous fence adjoining any road, community land or public place	General Inspector	Development-Services to be consulted if potential structural concerns
	Where there are overhanging branches, overgrown vegetation or structures on land adjoining a public place which obstruct streets;	General Inspector	Development-Services to be consulted if potential structural concerns or City Infrastructure
	Where there is drainage of water across the road;	General Inspector	Development-Services for storm water related issues, or Environmental Health
	Where a flag, banner, flagpole or sign intrudes into a public place;	General Inspector	Development Services to be consulted if potential structural concerns or Development approval required
3.2 Inappropriate use of Vehicle	<p>Where use of a caravan or vehicle for habitation presents a risk to the health and safety of an occupant;</p> <p>Use of the vehicle as habitation causes a threat of damage to the environment;</p> <p>Use of the vehicle as habitation detracts significantly from the amenity of the locality.</p>	Environmental Health and Safety Section	Development Services to be Consulted, for location issues and amenity

Section 216 Local Government Act 1999

Order Provision	Details	Primary Responsibility	Other Information
Power to order owner of private road to carry out specified roadwork	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.	City Infrastructure	Development Engineering as required Inspectorate support as required relating to enforcement and orders

Section 218 Local Government Act 1999

Order Provision	Details	Primary Responsibility	Other Information
Power to require owner of adjoining land to carry out specified work	A council may, by order in writing to the owner of 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.	City Infrastructure	Development Engineering as required Inspectorate support as required relating to enforcement and orders