



TATIARA DISTRICT COUNCIL

ORDER MAKING POLICY

APRIL 2014

Table of Contents

Table of Contents.....	2
The Purpose of the Policy.....	3
Power to Make Orders.....	3
Matters to which Policy Applies.....	3
Guiding Principles	5
Procedures.....	5
Appeal Rights.....	6
Action Non-Compliance with an Order.....	6
Responsibilities & Delegations	7
Penalties.....	7
Council endorsement of the Policy	7
Review & Evaluation	7
Availability of the Policy	7
Record of Amendments	8
Attachment 1	9

The Purpose of the Policy

- (1) The Tatiara District Council is responsible for 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 the community and to take measures to protect its area from hazards and to improve amenity.
- (2) To fulfil 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, to promote the health, safety and well-being of the community. This policy sets out the matters about which orders will be made. The relevant principles, procedures and penalties that will be applied are also established by this policy.

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 at Section 254 which empowers the Council to order a person to do or refrain from doing a thing under certain circumstances. This Policy does not apply to other circumstances provided for in the Local Government Act 1999 and other South Australian statutes, which specifically empower the Council to make orders or to take other enforcement action, when appropriate and as the need arises.
- (3) The exercise of the Council's order-making power, in accordance with this Policy and relevant statutes, co-exists with 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 statutes.

Matters to which Policy Applies

- (1) The matters to which this Policy applies are set out below. The matters are stated in general terms with particular examples for illustration purposes only. 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.
 - (a) Unightly Condition of Land: Section 254
 - (i) The Council may make an order directing the owner or occupier of land to ameliorate (make better) an unsightly condition of land that detracts from the amenity of the locality.

Examples of circumstances:

- one or more vehicles, boats, trailers, buses stored outside an approved compound or structure;
- the storage of rubbish, waste materials, building materials, spare parts and other objects on a property outside an approved structure or compound;
- the storage of goods and materials outside a building and near an adjoining property or road boundary in an Industrial Estate;

- the accumulation of dead, dying or overgrown vegetation;
- the accumulation of farm machinery and goods outside an approved farm building.

(b) Hazards on Land Adjoining a Public Place: Section 254

- (i) The Council may make an order against the owner or occupier of land to take action to deal with hazards on lands adjoining a public place.

Examples of relevant circumstances:

- a dangerous fence adjoining any road, community land or public place;
- where there are overhanging branches, overgrown vegetation or structures on land adjoining a public place which obstructs streets;
- where there is drainage of water across the road;
- where a flag, banner, flagpole or sign intrudes into a public place.

(c) Animals that may cause a nuisance or hazard: Section 254

- (i) The Council may make an order against an owner or occupier of land or any person engaged in promoting or conducting an activity that creates a nuisance or hazard to health or safety associated with live or dead animal or animals, or otherwise to deal with animal or animals.

Examples of such circumstances include:

- slaughtering of animals in an urban situation;
- keeping an excessive number of insects, birds or other animals;
- keeping animals which generate excessive noise, dust or odour or attract pests or vermin;
- keeping an aggressive animal or keeping an animal in a situation where it cannot be adequately contained or may cause danger to the public;
- failing to deal with a wasps nest;
- failure to bury or otherwise dispose of any dead animal or bird.

(d) Inappropriate use of a Vehicle: Section 254

- (i) The Council may make an order against an owner or occupier of land or a person apparently occupying a caravan or vehicle which is used as a place of habitation.

Examples of circumstances:

- where the 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.

- (e) Encroaching Vegetation: Section 299
- (i) The Council may, on the application of the owner or occupier of the land (the "relevant land"), by order, require the owner or occupier of adjoining land to remove or cut back vegetation encroaching on to the relevant land.

Guiding Principles

- (1) The Council will apply the following principles in the exercise of its powers to make orders:
- (a) 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) each or some or all of 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 well-being considerations;
 - Would an informal warning letter be sufficient?
 - Are there any public interest issues?
 - Whether there is sufficient evidence upon which Council may rely to exercise its order making powers
 - The offender's attitude
 - Number of complaints received in respect of the matter (if any).
- (b) In the case of vegetation clearance orders made under section 299 of the Act, Council will consider the following to assist in determining what circumstances might effectively be a private dispute between neighbours:
- Have the parties exhausted all other reasonable steps (including civil action)
 - Does the vegetation pose an immediate and/or serious threat to health and safety;
 - The apportionment of costs of complying with the order.

Procedures

- (1) Before making an order, unless the circumstances are urgent, the Council will take the following actions:
- (a) Give the person to whom an order under Section 255 of the Act is intended to be directed a notice in writing stating the –
- a. proposed action;
 - b. terms of the proposed order;
 - c. period within which compliance with the order would be required;
 - d. penalties for non-compliance;
 - e. reasons for the proposed order; and
- (b) Invite the person notified to give reasons, within a specified time, as to why the proposed action should not be taken.

- (2) 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.
- (3) Where notice of a proposed order has been given to a person who is not the owner of the relevant land, the Council will take reasonable steps to serve a copy of the notice on the owner of the land.
- (4) 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.
- (5) The order will provide for an appropriate time period in which the required action is to be taken.
- (6) An order will be served by the Council on the person to whom it is addressed. The Council will take reasonable steps to serve a copy of the order on the owner of the land.
- (7) The Council may vary any order or revoke any order as it considers fit.
- (8) If an emergency arises concerning a matter to which this Policy applies, the Council will take reasonable and appropriate action to deal with that emergency, as soon as practicable.
- (9) The Council will issue a separate order in respect of each matter about which an order is made.

Appeal Rights

Pursuant to section 256 any person to whom an order is issued (including an order issued under sections 254, 216, 218 or 299 of the Act) has a right to appeal against the order. Any such appeal must be lodged within 14 days of that person's receipt of the order. The Council will ensure that reference to this right of review is included in any order issued.

Action Non-Compliance with an Order

- (1) Where the requirements of an Order are not complied with, within the time fixed for compliance or, if there is an appeal, within 14 days after the determination of the appeal, the Council may (subject to the outcome of any appeal) take the action required by the Order.
- (2) That action will be taken on the Council's behalf by an employee of the Council or by another person authorised to do so by the Council.
- (3) Where the Council intends to take action, the Council will notify the person to whom the order is directed of the time and date on which the Council intends to do the action.
- (4) The Council will recover the reasonable costs and expenses incurred in taking action for non-compliance. The Council will seek to recover the amount within a time specified, being not less than 28 days from the date of the notice seeking recovery of the reasonable costs and expenses. The Council may recover the reasonable costs and expenses as a debt, for which the Council may impose a charge over the land

for the unpaid amount, together with interest in accordance with Section 257(5) of the Act.

- (5) If there are goods removed from a property, in the course of the Council taking action, the person to whom the order is directed will be given notice to retrieve the goods from the Council and pay associated storage costs within a specified time. If the goods are not collected, the Council may sell or dispose of those goods and retain any proceeds as a contribution towards the reasonable cost and expenses incurred by the Council.

Responsibilities & Delegations

This policy will be enforced by Authorised Persons who have been appointed (in writing) by the Council under section 260 of the Act

Penalties

- (1) Non-compliance with an order of the Council will constitute a breach of the Act and an offence for which a person may incur statutory penalties provided for in the Local Government Act 1999. The maximum penalty is \$2,500.00. The Expiation fee is \$210.00. The Council may impose those penalties. All notices of proposed orders and orders of the Council will include the specific statutory penalty relevant to a breach of that particular order, and advise of any applicable appeal rights.

Council endorsement of the Policy

- (1) This Policy was endorsed by Council on 10th April 2001 (Council Res No 240). Council endorsed the Policy following public consultation on its draft policy. Written submissions commenting on the draft policy were invited within 28 days of a notice appearing in the Border Chronicle. Submissions received were considered and taken into account in preparing this Policy.
- (2) Any future amendment or alteration to the Policy or a substitution of a new Policy, will be subject to the public consultation provisions of the Local Government Act 1999 at Section 259(2), unless the alteration has only minor significance and is likely to attract little or no community interest.

Review & Evaluation

- (1) The effectiveness of this Policy will be reviewed and evaluated on a bi-annual basis. The Chief Executive Officer of the Council will report to the Council on the outcome of the evaluation and make recommendations for amendment, alteration or a substitution of a new policy.

Availability of the Policy

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

Record of Amendments

DATE	REVISION NO	REASON FOR AMENDMENT
10th April 2001	Rev: 00	Original Issue of Policy adopted by Council (Council Res No 240 – Development Committee)
9th March 2004	Rev: 01	Bi annual Review – addition of 5.10 right to appeal to District Court
14th March 2006	Rev: 02	Policy reviewed
8 th September 2009	Rev: 03	Policy reviewed and adopted
1 st April 2014	Rev: 04	Policy reviewed and adopted <ul style="list-style-type: none"> • Inclusion of Attachment 1 • Extra considerations under Guiding Principles • Addition of Appeal Rights clause • Addition of Responsibilities & Delegations clause • Increased penalties as outlined in Act

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.

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
1. Unsightly condition of land		
To take action considered by the council to be necessary to ameliorate an unsightly condition.	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.	The owner or occupier of the land.
2. 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.	(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.

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
3. Animals that may cause a nuisance or hazard		
<i>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.</i>	<p><i>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.</i></p> <p><i>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.</i></p> <p>Examples—</p> <ol style="list-style-type: none"> <i>(1) The slaughtering of animals in a town or urban situation.</i> <i>(2) Keeping an excessive number of insects, birds or other animals.</i> <i>(3) Keeping bees in close proximity to other property.</i> <i>(4) Keeping animals so as to generate excessive noise, dust or odours, or to attract pests or vermin.</i> <i>(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.</i> <i>(6) Failing to deal with a wasp's nest</i> 	<i>The owner or occupier of land or any person apparently engaged in promoting or conducting an activity.</i>

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
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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.
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- (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.

216—Power to order owner of 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; and
 - (b) if an order is made, any order,
 under subsection (1).

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 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).

299—Vegetation clearance

- (1) A council may, on the application of the owner or occupier of the land (the **relevant land**), by order under this section, require the owner or occupier of adjoining land to remove or cut back vegetation encroaching on to the relevant 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).