POLICY 6.10
Regulatory Services
Order Making
Version: 4 **| Next Review:** November 2030

DISTRICT COUNCIL of TUMBY BAY

1. INTRODUCTION

The District Council of Tumby Bay (the Council) is committed to using the order-making powers 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. POLICY SCOPE

Section 259 of the Act requires each Council to take reasonable steps to prepare and adopt policies concerning the operation of Part 2 of Chapter 12 of the Act. Part 2 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 the table included within that section of the Act (refer Annexure A).

In accordance with the requirements of the Act, this Policy also applies in respect of orders issued by Council under section 216 (power to order the owner of a private road to carry out specified roadworks), section 218 (power to require owner of adjoining land to carry out specified work) and section 299 (vegetation clearance).

Council has determined to extend the application of this Policy to orders issued under section 17 of the Act (in relation to Council's powers to order the owner of infrastructure installed on a road to carry out specific maintenance or repair).

Local nuisances (other than those found in the 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 2016* will be dealt with in accordance with the procedures set out in that Act.

3. LEGISLATIVE REQUIREMENTS

This Policy is made pursuant to section 259 of the *Local Government Act 1999* and operates in accordance with Part 2, Chapter 12 of that Act, which governs the making of orders by Council, including sections 254 to 258, 260, 261 and related provisions for specific orders under sections 17, 216, 217, 218 and 299. Where matters fall within its scope, the *Local Nuisance and Litter Control Act 2016* may also apply and will be administered in accordance with that Act.

This Policy should be read in conjunction with any other relevant legislation, regulations and Council by-laws applicable to the circumstances of a particular matter.

4. SPECIFIED INFRINGEMENTS

The specified infringements (refer Attachment A) are summarised with the examples detailed below. 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.

5.1 Unsightly condition of property (section 254 of the Act)

The Council may make an order directing the owner or occupier of land to ameliorate an unsightly condition of land that detracts from the amenity of the locality.

Examples of such circumstances include:

a) the storage or keeping, in a visually obtrusive location, of building materials, disused car bodies, machinery or other articles,

b) a partially completed or partially demolished building or structure that that has been in that state for more than 6 months and is visually obtrusive.

5.2 Hazards on land adjoining a public place (section 254 of the Act)

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) where a fence, hedge or hoarding is over one metre in height and within 6 metres of the corner of an intersection,

b) where a dangerous fence such as barbed wire adjoins any community land or public place,

c) where there are overhanging branches without a 2.7m. clearance over a footpath, overgrown vegetation or materials or structures on land adjoining a public place, which obstructs either the footpath or roadway,

d) where stormwater from a property flows across the footpath or road or where a stormwater disposal system is not approved by Council,

e) where a fence is required to prevent the escape of animals,

f) where a flag, banner, flagpole or sign intrudes into a public place.

5.3 Animals that may cause a nuisance or hazard (includes birds and insects) (section 254 of the Act)

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 a live or dead animal or animals including birds, or otherwise to deal with animal or animals including birds.

Examples of such circumstances include:

a) slaughtering of animals in an urban situation,

b) keeping an excessive number of insects, birds or other animals,

c) keeping of bees within 15 metres of any building in the occupation of another person or any street, road, parklands, reserve or other land managed by or for or under the control of the Council or zoned for residential living in the Development Plan or where the keeping of bees may create a nuisance or danger to persons,

d) keeping animals which generate excessive noise, dust or odour or attract pests or vermin,

e) keeping an aggressive animal or keeping an animal in a situation where it cannot be adequately contained or may cause danger to the public,

f) failing to dispose of a European Wasp nest or to allow Council's contractors entry to do so,

g) keeping of more than three (3) head of poultry unless such poultry is contained within an appropriate structure,

h) the keeping of more than three (3) head of ducks, geese or turkeys over the age of 4 weeks of either sex, unless such birds are contained within appropriate yards and enclosures in appropriate locations,

i) the keeping of more than three (3) pigeons unless the pigeons are contained within an appropriate shed or loft in an appropriate location,

j) the keeping of birds referred to above and galahs, cockatoos and peacocks, unless rat-proof food containers are used, they are kept in a clean and sanitary condition and food allowed to remain outside such containers are for immediate consumption,

k) failure to bury or otherwise lawfully dispose of any dead animal or bird.

5.4 Inappropriate Use of a Vehicle (section 254 of the Act)

The Council may make orders 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:

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

b) use of the vehicle as habitation causes a threat of damage to the environment,

c) use of the vehicle as habitation detracts significantly from the amenity of the locality.

5. GUIDING PRINCIPLES

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

6.1 Each case for the possible use of the order making powers will be considered on its own merits. Factors that Council will consider include:

a) The severity of the incident.

b) The hazard or danger posed to the community.

c) The risk to health and safety of the community.

d) Detraction from the amenity of the locality.

e) Repeated occurrences of the activity or incident (e.g. duration, previous offences)

f) The impact of any previous actions to overcome the problem.

g) Is the breach significant /substantial?

h) Would an informal warning letter be sufficient?

i) Are there any public interest issues?

j) Whether there is sufficient evidence upon which Council may rely to exercise its order making powers.

k) The offender's attitude.

l) Number of complaints received in respect of the matter (if any).

6.2 In the case of vegetation clearance, orders made under section 299 of the Act, Council will take into consideration the following to assist in determining what circumstances might effectively be a private dispute between neighbours.

a) Have the parties exhausted all other reasonable steps (including civil action)

b) Does the vegetation pose an immediate and /or serious threat to health and safety?

c) The apportionment of costs of complying with the order.

6. 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.

Except in the case of an emergency described below, before making an order, the Council will give notice of its intention to make an order in accordance with section 255 of the Act by:

7.1 Giving the person to whom an order is intended to be directed a notice in writing stating the:

a) proposed action,

b) terms of the proposed order (i.e. what it requires the person to do or refrain from doing),

c) period within which compliance with the order will be required,

d) penalties for non-compliance, and

e) reasons for the proposed action.

7.2 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, or
- an immediate threat to public health or public safety, or
- an emergency situation.

7. REVIEW RIGHTS

Pursuant to section 256 any person to whom an order is issued (including an order issued under sections 254, 216, 217, 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.

8. 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.

9. PENALTIES

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, 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 for the owner, and
- the owner is guilty of an offence and liable to a maximum penalty not exceeding $5,000.

10. RESPONSIBILITIES AND DELEGATIONS

This policy will be enforced by Authorised Persons, who have powers under section 261 of the Act to enforce breach of orders by way of expiation, and 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 254, 216, 217, 218 and 299 of the Act to Council staff subject to conditions and/or limitations, in which case, Council will ensure appropriate delegations are in place.

11. PUBLIC CONSULTATION

This Policy was first endorsed by Council on 13 September 2010. Council endorsed the Policy following public consultation on its draft Policy.

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.

12. POLICY REVIEW & EVALUATION

The effectiveness of the policy will be reviewed every four (4) years, or reviewed and evaluated as determined necessary by the Council or the Chief Executive Officer from time to

time. Public consultation is required on any amended policy, unless the Council determines that the amendment is of only minor significance.

The Chief Executive Officer will report to Council on the outcome of the evaluation, and make recommendations for amendment, alteration or substitution of a new Policy.

13. AVAILABILITY OF POLICY

This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website www.tumbybay.sa.gov.au. Copies will also be provided to interested members of the community upon request, and upon payment of a fee in accordance with Council's schedule of fees and charges.

14. FURTHER INFORMATION

File reference	R26/11708
Responsibility	Chief Executive Officer
Version	4
Effective date	14/07/2026
Minutes reference	18c/72026
Next review date	November 2030
Applicable Legislation	*Local Government Act 1999* *Local Nuisance and Litter Control Act 2016* *Expiation of Offences Act 1996* *Planning, Development and Infrastructure Act 2016* *Dog and Cat Management Act 1995* *Road Traffic Act 1961* *South Australian Public Health Act 2011*
Related Policies	
Related Documentation	

AUTHORITY:

Adopted by Council:	10/10/2011	{Motion 19c/102011}
Reviewed by Council:	10/11/2015	{Motion 7c/112015}
Reviewed by Council:	10/03/2020	{Motion 5c/32020}
Adopted by Council:	14/07/2026	{Motion 18c/72026}

SIGNED: 

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Responsible Officer

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ANNEXURE A

Local Government Act 1999

Chapter	12	Regulatory Functions
Part	2	Orders
Division	1	Power to make orders
Section	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.

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
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. <u>Examples:</u> • 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.	(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.
3. Animals that may cause a nuisance or hazard 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	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. A person is the owner or occupier of land where an animal or animals are located which may cause, or be likely to	The owner or occupier of land or any person apparently engaged in promoting or conducting an activity.

Column 1 **To do or to refrain from doing what?**	**Column 2** **In what circumstances?**	**Column 3** **To whom?**
deal with an animal or animals.	cause, a nuisance or a hazard to health or safety, or otherwise to become a pest. Examples: (1) The slaughtering of animals in a town or urban situation. (2) Keeping an excessive number of insects, birds or other animals. (3) Keeping bees in close proximity to other property. (4) Keeping animals so as to generate excessive noise, dust or odours, or to attract pests or vermin. (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. (6) Failing to deal with a wasp's nest.	
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: (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.

(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).

OPERATIONAL CHECKLIST

Action or Decision Required	Issues to Consider
Order Making Powers - sections of the legislation the policy will apply to.	Council may wish to include other order making provisions in the policy which are outside the legislative requirement for inclusion: • s.217 (Power to order owner of infrastructure installed on road to carry out specified maintenance or repair work).
Order Making Powers - determine whether to list specific cases in which it intends to utilise the order making powers in addition to those specified in the table in section 254 of the Act.	Council may wish to state in the policy that it is Council's intention to deal with a particular local nuisance (e.g. animal nuisance previously covered by a by-law). Council needs to consider this issue in context with its review of by-laws.
Identify principles which Council considers central to effective resolution of local nuisances.	Council needs to consider: • what factors it will take into account when considering each case on its merits; and • how it will use the order making provisions to achieve Council's policy statement.
Penalties – Inclusion of penalties that apply.	Where Council has stated that the policy will apply to additional sections of the legislation, penalties relating to these sections will need to be included.
Delegations – Inclusion of any conditional arrangements.	Council will need to consider if any delegations to Council staff will be subject to conditions and/or limitations.
Fee – Purchase of copy of policy.	Council needs to determine if a fee for purchase of the policy will apply. Any fee set by Council should be consistent with that applying for the purchase of other Council policies.