

1. RATIONALE

Councils have order making powers available to them under the Local Government Act 1999 ('the Act') to target and resolve cases of local nuisance on private land; to order the owner of a private road to carry out specified roadworks; and to require the owner of adjoining land to carry out specified work.

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 which deals with making such orders.

The City of Marion uses the order making powers available under the Act to facilitate a safe and healthy environment, improve the amenity of a locality, and generally for the good governance of its area.

2. POLICY STATEMENT

Council takes a consultative and collaborative approach to resolve a local nuisance on private land prior to exercising its order making powers under the Act unless an emergency or immediate danger exists, in which case, Council may issue an order immediately.

Council applies the principles of social justice, ecological sustainability, accountability, transparent process and good customer service when attempting to resolve a local nuisance on private land.

All orders issued by Council under the Local Government Act 1999 relate to the circumstances specified and comply with the requirements under the Act.

3. OBJECTIVES

The primary objective of this Policy is to ensure the order making powers available to Council under the Local Government Act 1999 are exercised appropriately.

4. POLICY SCOPE AND IMPLEMENTATION

Scope

This Policy applies 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 Attachment 1).

This Policy also applies in respect of orders issued by Council under Section 216 (power to order the owner of private road to carry out specified roadworks) and Section 218 (power to require owner of adjoining land to carry out specified work) of the Act.

Implementation

Policy Ref/Security Classification:

Category: Public/Legislative

Owner: Manager Development & Regulatory Services

Authorisation Date: 10/08/2021

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4.1 Making orders

Authorised Officers consider the following factors when assessing the local nuisance on private land and determining the need to issue an order under the Act:

- severity of the incident
- hazard / danger posed to the Community
- risk to health and safety of the Community
- impact on local amenity
- frequency of occurrence
- previous attempts to reconcile the situation
- potential to use options such as negotiation, mediation, warnings or other more collaborative approaches
- public interest
- offender attitude / recidivism
- evidentiary support (where there is potential for the order to be challenged)
- opportunities to take action under alternative legislation
- number of complaints received in respect of the matter (if any).

Authorised Officers may use consultative or collaborative processes to resolve a local nuisance on private land. Examples include but are not limited to: telephone calls; personal visits; notification letters; and negotiation.

Authorised Officers may determine to issue an order without any prior consultation or collaboration if the circumstances constitute or are likely to constitute:

- a threat to life; or
- an immediate threat to public health or safety; or
- an emergency situation.

Authorised Officers ensure that orders are issued in the manner and form required under the Act and in accordance with Council policy and procedure.

4.2 Failure to comply with an issued order

Section 258 of the Local Government Act 1999 provides for a maximum penalty of \$2,500 and an expiation fee of \$210 for failure to comply with an order issued under Section 254 of the Act.

4.3 Reviews and appeals

Pursuant to Section 256 of the Act, 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 must be lodged within 14 days of that person's receipt of the order.

Council includes reference to the right of review in any order issued.

Appeals against an action brought against a person under this Policy must be in writing and will be considered by Council's Chief Executive Officer. Where appropriate, the Chief Executive Officer may refer the matter to Council.

5. DEFINITIONS

<i>Term</i>	<i>Definition</i>
Nil	

6. ROLES AND RESPONSIBILITIES

<i>Role</i>	<i>Responsibility</i>
Authorised Officers	<ul style="list-style-type: none">• Make orders in accordance with this Policy
Chief Executive Officer	<ul style="list-style-type: none">• Consider appeals lodged in accordance with this Policy; refer appeals to Council, if necessary

7. REFERENCES

City of Marion

- *Enforcement Policy*

Other

- *Local Government Act 1999*

8. REVIEW AND EVALUATION

The Governance Department reviews this Policy every four years (or earlier if required) in accordance with the City of Marion Policy Framework. Council approves this Policy.

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	Column 2	Column 3
To do or to refrain from doing what?	In what circumstances?	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 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.

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Column 1	Column 2	Column 3
<i>To do or to refrain from doing what?</i>	<i>In what circumstances?</i>	<i>To whom?</i>
(4) <i>Where the public place is a road—to take action necessary to protect the road or to remove a hazard to road users.</i>	(4) <i>A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.</i>	(4) <i>The owner or occupier of the land.</i>

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.*

3. Animals that may cause a nuisance or hazard

Refer to Local Nuisance and Litter Control Act 2016.

Column 1	Column 2	Column 3
<i>To do or to refrain from doing what?</i>	<i>In what circumstances?</i>	<i>To whom?</i>
4. Inappropriate use of vehicle		
<i>To refrain from using a caravan or vehicle as a place of habitation.</i>	<p><i>A person is using a caravan or vehicle as a place of habitation in circumstances that—</i></p> <p><i>(a) present a risk to the health or safety of an occupant; or</i></p> <p><i>(b) cause a threat of damage to the environment; or</i></p> <p><i>(c) detract significantly from the amenity of the locality.</i></p>	<i>The owner or occupier of the land or a person apparently occupying the caravan or vehicle.</i>

- (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).*

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