

1. Introduction

1.1 Purpose

The District Council of Cleve is committed to using the order making powers available to it under the *Local Government Act 1999* in a manner that facilitates a safe and healthy environment, improves the amenity of the locality and supports the good governance of the Council area.

This Order Making Policy is established pursuant to Section 259 of *Local Government Act 1999* and sets out the steps Council will take when making orders.

1.2 Application

Section 259 of the *Local Government Act 1999* requires 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 the making of orders.

This Policy applies to circumstances listed in Section 254 of the Act where Council may order a person to do or refrain from doing a specified act.

In accordance with the Act, this Policy also applies to orders issued under:

- Section 216 – Power to order owner of private road to carry out specified roadwork;
- Section 217 – Power to order owner of infrastructure installed on a road to carry out specified maintenance or repair;
- Section 218 – Power to require owner of adjoining land to carry out specified work; and
- Section 299 – Vegetation clearance.

Matters falling within the jurisdiction of the *Local Nuisance and Litter Control Act 2016* will be dealt with in accordance with that Act.

2. Definitions

2.1 Order

An Order is a written direction issued by Council under the *Local Government Act 1999* requiring a person to do, or refrain from doing, a specified act.

2.2 Authorised Person

A person appointed by Council under Section 260 of the *Local Government Act 1999* to administer and enforce the provisions of the Act.

3. Legal Obligation

This Policy is established in accordance with:

- *Local Government Act 1999*, Section 259;
- Part 2, Chapter 12 of the *Local Government Act 1999*;
- *Local Nuisance and Litter Control Act 2016*.

4. Principles for Making Orders

Each case involving the possible use of Council's order making powers will be considered on its merits.

Factors that Council may consider include:

- Severity of the incident;
- Hazard or danger posed to the community;
- Risk to public health or safety;

- Impact on the amenity of the locality;
- Repeated occurrence of the activity or incident;
- Effectiveness of previous actions taken;
- Significance of the breach;
- Whether an informal warning would be sufficient;
- Public interest considerations;
- Availability of sufficient evidence; and
- The attitude of the person involved and any complaints received.

5. Prior Notification

Except in circumstances described in Section 6 of this Policy, Council will take appropriate measures prior to issuing an order in accordance with Section 255 of the *Local Government Act 1999*.

Written notice will generally include:

- The proposed action;
- The terms of the proposed order;
- The period allowed for compliance;
- Penalties for non-compliance;
- Reasons for the proposed action; and
- An invitation for the recipient to provide reasons why the proposed action should not be taken.

6. Immediate Action

Council will take reasonable steps to resolve matters through negotiation before issuing an order where practicable.

However, Council may proceed directly to issuing an order where it considers the circumstances constitute or are likely to constitute:

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

7. Review Rights and Penalties

7.1 Review Rights

Under Section 256 of the *Local Government Act 1999*, a person to whom an order is issued may seek a review of that order.

Any application for review must be lodged within fourteen (14) days of receipt of the order.

Council will ensure information regarding review rights is included in all orders issued.

7.2 Penalties

If an order is not complied with within the specified period, Council may undertake the required work and recover reasonable costs and expenses from the person who failed to comply.

Where costs are recoverable:

- Council may provide written notice requiring payment within a period of not less than 28 days;
- Interest may be applied to unpaid amounts; and
- Council may impose a charge over the land in accordance with Section 257(5) of the Act.

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

Where an order is issued under Section 217 and is not complied with:

- Council may carry out the required work and recover the costs as a debt; and

- The owner may be liable to a maximum penalty of \$5,000.

8. Further Information

This policy is available for inspection at the District Council of Cleve principal office, 10 Main Street, Cleve SA 5640, during ordinary business hours upon payment of the fee fixed by the Council in accordance with the Council's Fees & Charges.

It is also available to be downloaded, free of charge, from Council's website www.cleve.sa.gov.au. Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the current version.

Responsible Department/Officer	Chief Executive Officer
Applicable Legislation	Local Government Act 1999 Local Nuisance and Litter Control Act 2016
Related Policies	Enforcement Policy Local Nuisance and Litter Control Procedures
Related Procedures	Compliance and Enforcement Procedures Delegations Register

9. Policy/Document Review

This Policy/Document will be reviewed by the District Council of Cleve every four (4) years. The Council has the right to review this policy at any time, if considered desirable.

10. Document History

Version	Adopted	Description of Change
6.2	18 August 2026	Formatting

ATTACHMENT 1

Local Government Act 1999

Division 1—Power to make orders

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?
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.

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