



District Council of Cooper Pedy

MAKING OF ORDERS

Adopted: 11th February 2002

Reviewed: 15th November 2011

1. Introduction

The District Council of Coober Pedy is committed to using the order making powers available to it under the Local Government Act 1999, including the power to make orders for a person to do or refrain from doing something in such a way as to facilitate a safe and healthy environment, and to improve the amenity of the locality.

The District Council of Coober Pedy's Order Making Policy sets out the steps Council will take in the making of orders.

2. Background

2.1 As part of its principle role, the District Council of Coober Pedy provides for governance and management of its area, at the local level, and in particular to act as a representative, informed and responsive decision-maker in the interests of its community.

2.2 The functions of Council include (but are limited to):

- to provide for the welfare, well being and interests of individuals and groups within its community;
- to take measures to protect its area from natural and other hazards and to reduce the effects of such hazards;
- to manage, develop, protect, enhance and conserve the environment and to improve the amenities.

2.3 The Council must, in the performance of its role and functions, provide open, responsive and accountable government, and be responsive to the needs, interests and aspirations of individuals and groups within the community.

2.4 A number of State Government statutes administered by Local Government contain a range of powers to enable the Council to issue Orders in certain circumstances. Therefore the Council, having regard to its responsiveness and accountability, intends to draw together the range of order making powers for public consultation and determination in the interests of its community.

3. Scope

3.1 The Local Government Act 1999 (“the Act”)

Section 259 of the Local Government Act 1999 requires the 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 making orders. Section 259 outlines the procedures to be undertaken when developing policies.

- 3.1.1 Section 254 of the Act provides a range of powers for the Council to make orders for a variety of circumstances such as:
- unsightly condition of land;
 - hazards on land adjoining a public place;
 - animals that may cause a nuisance or hazard;
 - inappropriate use of vehicles.
- 3.1.2 Section 216 of the Act provides Council with the power to order the owner of a private roadway to carry out specified roadwork to repair or improve the road.
- 3.1.3 Section 217 of the Act provides Council with the power to order an owner of infrastructure installed in, on, across, under or over a road to carry out specified maintenance or repair work, or to move the infrastructure to allow council to carry out roadwork.
- 3.1.4 Section 218 of the Act provides Council with the power to require the owner of land adjoining a road to carry out specified work to construct, remove or repair a crossing place from the road to the land.
- 3.1.5 Section 299 of the Act provides that a 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.

3.2 Dog & Cat Management Act 1995

A Council may make an Order of any of the following classes in relation to a specified dog:

- a dangerous dog;
- a nuisance dog;
- a barking dog;
- a destruction order

3.3 Public & Environmental Health Act 1987

The Public & Environmental Health Act 1987 (Section 3 (2)) provides that a Council may declare any premises to be in an unsanitary condition.

Subsequent to 1st July 2002, the District Council of Coober Pedy is responsible for carrying out the legislative requirements of the Public & Environmental Health Act 1987.

4. Local Government Act 1999 – Orders

4.1 Specified Roadworks on Private Roads

Pursuant to Section 216 of the Local Government Act 1999, 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.

If the work is not carried out within a reasonable time fixed in the order the council may itself have the work carried out and recover the cost of the work as a debt from the owner. The owner is guilty of an offence and liable to a penalty not exceeding \$5,000.

4.2 Infrastructure Installed on Roads

Pursuant to Section 217 of the Local Government Act 1999, Council may, by order in writing to the owner of a structure or equipment (including pipes, wires, cables, fittings and other objects) installed in, on, across, under or over a road, require the owner:

- to carry out specified work by way of maintenance or repair; or
- to move the structure or equipment in order to allow the council to carry out roadwork.

If the work is not carried out within a reasonable time fixed in the order the council may itself have the work carried out and recover the cost of the work as a debt from the owner. The owner is guilty of an offence and liable to a penalty not exceeding \$5,000.

The above does not apply to the owner of electricity infrastructure or public lighting infrastructure if the Industry Regulator has determined, on application by the owner, that there are reasonable grounds for not requiring the owner to take the action specified in the order.

4.3 Crossing Places on Roads

Pursuant to Section 218 of the Local Government Act 1999, 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.

If the work is not carried out within a reasonable time fixed in the order the council may itself have the work carried out and recover the cost of the work as a debt from the owner. The owner is guilty of an offence with the maximum penalty of \$2,500 or an Expiation Fee of \$105.

4.4 Local Nuisance Matters

Section 254 of the Local Government Act 1999 provides certain powers to Council to make orders in relation to the following:

- unsightly condition of land;
- hazards on land adjoining a public place
- animals that may cause a nuisance or hazard
- inappropriate use of vehicles

The Table referred to in the following paragraph is that table forming Attachment 1.

A Council may order a person to do or 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. A reference in the table to an animal or animals includes birds and insects.

4.5 Vegetation Clearance

Pursuant to Section 299 of the Local Government Act 1999, Council may, on the application of the owner or occupier of the land (the “relevant land”), by order under the section, require the owner or occupier of adjoining land to remove or cut back vegetation encroaching on to the relevant land.

4.6 Procedures to be followed

Except in the case of an emergency the Council must, before taking action to make an order under all of the above circumstances, give the person to whom it is proposed that the order be directed a notice in writing setting out the following details:

- stating the proposed action, including the terms of the proposed order and the period within which compliance with the order will be required; and
- stating the reasons for the proposed action; and
- inviting the person to show, within a specified time (of a reasonable period), why the proposed action should not be taken (by making representations to the council or a person nominated to act on behalf of the council).

5. Dog & Cat Management Act 1995

Section 50 of the Dog and Cat Management Act provides that a Council may make an order of any of the following classes in relation to a specified dog:

5.1 *Control (Dangerous Dog) Order:*

The following provisions apply in relation to the issue of a dangerous dog order:

- the dog must, while on premises of which the person who is responsible for the control of the dog is the occupier, be kept indoors or in an enclosure that is constructed so as to prevent the dog escaping from it; and
- the dog must at all times wear a collar that complies with the requirements of the Board (except while the dog is suffering from injury, disease or sickness to the extent that the wearing of a collar would be injurious to the health of the dog); and
- the dog must, except while confined to premises of which the person who is responsible for the control of the dog is the occupier-
 - ▶ have a muzzle securely fixed on its mouth so as to prevent it from biting any person or animal; and
 - ▶ be under the effective control of a person by means of a chain, cord or leash that is less than 2 metres in length restraining the dog; and
- warning signs (complying with the requirements of the Board) must be prominently displayed at all entrances to premises where the dog is usually kept warning people that a dangerous dog is kept on the premises; and
- all reasonable steps must be taken to prevent the dog repeating the behaviour that gave rise to the order;

5.2 *Control (Nuisance Dog) Order:*

In these particular circumstances, the dog must:

- the dog must, while on premises of which the person who is responsible for the control of the dog is the occupier, be kept indoors or in an enclosure that is constructed so as to prevent the dog escaping from it; and
- the dog must, except while confined to premises of which the person who is responsible for the control of the dog is the occupier, be under the effective control¹ of a person by means of a chain, cord or leash that is less than 2 metres in length restraining the dog; and
- all reasonable steps must be taken to prevent the dog repeating the behaviour that gave rise to the order;

5.3 *Control (Barking Dog) Order*

All reasonable steps must be taken to prevent the dog repeating the behaviour that gave rise to the order.

5.4 *Destruction Order*

- the dog must be destroyed within a specified period (but not less than one month after the date of the order); and
- the dog must be kept or detained until destroyed at a place specified in the order (or at some other place subsequently approved by the council);

5.5 *Grounds on which Orders may be made*

The Council may, on its own initiative or on application, make a “destruction order” in relation to a dog if satisfied that:

- the dog is unduly dangerous; and
- the dog has attacked, harassed or chased a person or an animal or bird owned by, or in the charge of a person in circumstances that would constitute an offence against the Dog & Cat Management Act.

The Council may, on its own initiative or on application, make a “controlled (dangerous dog) order” in relation to a dog if satisfied that:

- the dog is dangerous or a nuisance; and

- the dog has attacked, harassed or chased a person or an animal or bird owned by, or in the charge of a person in circumstances that would constitute an offence against the Dog & Cat Management Act.

The Council may, on its own initiative or on application, make a “controlled (barking dog) order” in relation to a dog if satisfied that:

- the dog is a nuisance; and
- the dog has created noise by barking or otherwise in circumstances that would constitute an offence against the Dog & Cat Management Act.

For example, if the dog (either alone or together with other dogs and whether or not in the same ownership), creates a noise, by barking or otherwise, which persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of a person.

6.0 Public & Environmental Health Act 1987

The Public & Environmental Health Act 1987 (Section 3 (2)) provides that premises are in an insanitary condition if:

- the condition of the premises gives rise to a risk to health;
- the premises are so filthy or neglected that there is a risk of infestation by rodents or other pests;
- the condition of the premises is such as to cause justified offence to the owner of any land in the vicinity;
- offensive materials or odours are emitted from the premises; or
- the premises are (for some other reasons), justifiably declared by the Council to be in an insanitary condition.

Section 15 of the Public & Environmental Health Act 1987 enables the Council to issue a notice to require action to improve premises in an insanitary condition. In issuing a notice under this section, the Council must satisfy itself that the conditions to be rectified constitute an insanitary condition as outlined above. That is, the Authority must be satisfied that the conditions give risk to any of the above terms defined in the Act.

The District Council of Coober Pedy is responsible for carrying out the legislative requirements of the Act.

7.0 Consolidation of Procedures

Pursuant to Section 259 of the Local Government Act 1999, Council must take into account any relevant policies in consideration as to whether an order is to be made and to deal with each case on its merits.

Pursuant to Section 255 of the Local Government Act 1999, Council must, before taking action to make an order, give the person to whom it is proposed that the order be directed a notice in writing as follows:

- stating the proposed action, including the terms of the proposed order and the period within which compliance with the order will be required; and
- stating the reasons for the proposed action; and
- inviting the person to show, with a specified time (of a reasonable period), why the proposed action should not be taken (by making representations to the council or a person nominated to act on behalf of the council).

What is a reasonable period?

- 7.1 The Local Government Act 1999 is silent in relation to “a reasonable period”, but in the rights of review to the District Court, there is mention of 14 days after service of an order, therefore it would appear proper that 14 days may appear to be reasonable, subject to a case by case situation.
- 7.2 The Dog & Cat Management Act 1995 provides that before making an order in relation to a dog, the Council must give a person at least 7 days written notice and thereafter, 14 days to appeal against the order to the District Courts. Therefore there is no reason why, in formulating a consolidated procedure, that the owner of a dog should not be given 14 days notice of a pending order rather than 7 days.
- 7.2 The Public & Environmental Health Act 1987 is silent in relation to providing notice of a pending order, however in any appeal against an order, evidence will have to be provided that the owner of the property was given an opportunity to make representation to the Council, or to negotiate an undertaking to carry out a program of work to rectify the unsatisfactory conditions before an order is issued. In such cases, it is believed that in a consolidation of procedures, 14 days notice would be appropriate, subject to the particular circumstances of the case.

Therefore as a consolidated general rule, Council will adopt a 14 day notice period of the likelihood of an Order being made in the particular circumstances.

8.0 Principles

8.1 Each case for the possible use of the order making powers will be considered on its merits, however there are factors that Council will consider in that process and they are as follows:

- severity of the incident
- hazard/danger posed to the community
- risk to health/safety of the community
- detraction from the amenity of the locality
- repeated occurrence of the activity/incident (eg duration, previous offences)
- impact of any previous actions to overcome the problem
- is the breach significant/substantial
- would an informal warning letter be sufficient
- are there any public interest issues
- what evidence is available
- offenders attitudes

8.2 Reasonable steps will be taken to resolve cases of local nuisance by negotiation with the person involved before considering issuing an order, except in cases where:

- Council considers that the circumstances or activity constitutes, or is likely to constitute:-
 - a threat to life
 - an immediate threat to public health or public safety
 - an emergency situation

9.0 Formal issuing of an Order

Council will comply with and follow the procedures set out in Section 255 of the Local Government Act 1999, which are as follows:

- (1) A council must, before taking action to make an order under this Part (but subject to this section), give the person to whom it is proposed that the order be directed a notice in writing—
 - (a) stating the proposed action, including the terms of the proposed order and the period within which compliance with the order will be required; and
 - (b) stating the reasons for the proposed action; and
 - (c) inviting the person to show, within a specified time (of a reasonable period), why the proposed action should not be taken (by making representations to the council or a person nominated to act on behalf of the council).
- (2) If a notice is directed 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.
- (3) The council may, after considering representations made within the time specified under subsection (1)—
 - (a) make an order in accordance with the terms of the original proposal; or
 - (b) make an order with modifications from the terms of the original proposal; or
 - (c) determine not to proceed with an order.
- (4) The council is not required to give further notice before it makes an order with modifications under subsection (3)(b).
- (5) A council may—
 - (a) include two or more orders in the same instrument;
 - (b) direct two or more persons to do something specified in the order jointly.
- (6) An order must—
 - (a) subject to this section, specify a reasonable period within which compliance with the order is required; and
 - (b) state the reasons for the order.
- (7) An order must be served on the person to whom it is addressed.

- (8) If an order is directed to a person who is not the owner of the relevant land, the council must take reasonable steps to serve a copy of the order on the owner.
- (9) If land is owned or occupied by more than one person—
 - (a) an order in respect of the land is not invalid merely because it is not directed to all of those owners or occupiers; and
 - (b) an owner or occupier who complies with an order may recover a fair contribution from other owners or occupiers.
- (10) Nothing in this section affects the right of a person from recovering from another all or any of the expenses incurred by the person in complying with an order.
- (11) A council may, at the request, or with the agreement, of the person to whom an order is directed, vary an order or may, on its own initiative, revoke an order if satisfied that it is appropriate to do so.
- (12) If a council, in the circumstances of a particular case, considers—
 - (a) that an activity constitutes, or is likely to constitute, a threat to life or an immediate threat to public health or public safety; or
 - (b) that an emergency situation otherwise exists,the council may—
 - (c) proceed immediately to make an order under this section without giving notice under subsection (1); and
 - (d) require immediate compliance with an order despite subsection (6)(a).
- (13) A council is not required to comply with any other procedure, or to hear from any other person, except as provided by this section before it makes an order under this section.

10. Rights of review

Council will comply with and follow the procedures set out in Section 256 of the Local Government Act 1999, which are as follows:

- (1) An order must include a statement setting out the rights of a person to apply for a review of the order under this Act.
- (2) A statement is sufficient for the purposes of subsection (1) if it includes the information specified by the regulations.

- (3) A person to whom an order is directed may, within 14 days after service of the order, apply to the District Court for a review of the order.
- (4) Subject to subsection (5), the operation of an order continues pending the determination of an application for review under this Act.
- (5) The District Court or the council may, if it thinks fit, make an interim order suspending the operation of an order.
- (6) The District Court may, if satisfied that it is appropriate and just in the circumstances, vary or set aside an order on an application under this section.
- (7) The District Court may (but need not), in exercising its jurisdiction under this section, be constituted of a magistrate.

11. Action on non-compliance with an order

Council will comply with and follow the procedures set out in Section 257 of the Local Government Act 1999, which are as follows:

- (1) If the requirements of an order are not complied 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.
- (2) Action to be taken by a council under subsection (1) may be taken on the council's behalf by an employee of the council or by another person authorised by the council for the purpose.
- (3) The reasonable costs and expenses incurred by a council in taking action under this section may be recovered by the council as a debt from the person who failed to comply with the requirements of the order.
- (4) If an amount is recoverable from a person by a council under this section, the 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—
 - (a) the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
 - (b) if the person is the owner of the land to which the order relates—the council may, in accordance with schedule 6, impose a charge over the land for the unpaid amount, together with interest.

- (5) 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.

12. Non-compliance with an order an offence

Pursuant to Section 258 of the Local Government Act 1999, a person who contravenes or fails to comply with an order under this is guilty of an offence.

Maximum penalty: \$750

Expiation fee: \$105

13. Responsibilities & Delegations

The District Council of Coober Pedy Order Making Policy will be enforced by Authorised Officers who have been appointed (in writing) by the Council.

14. Endorsement of Policy

This Policy was endorsed by Council on 11th February 2002. Council endorsed the Policy following public consultation on its Draft Policy in accordance with its Public Consultation 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.

15. Public Availability of this Procedure

Council must ensure that copies of a document concerning the procedures in relation to the internal review of Council decisions is available for inspection (without charge) and purchase (on the payment of a fee fixed by the Council) by the public at the principal office of the Council.

16. Review of this Procedure

The Code may be reviewed from time to time by Council **OR** the Council is required to review this Code within 12 months after the conclusion of each periodic election.

ATTACHMENT 1

Page 1

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

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
<p>2. Hazards on lands adjoining a public place</p> <p>(1) To fence, empty, drain fill or cover land (including land on which there is a building or other structure).</p> <p>(2) To remove overgrown vegetation, cut back overhanging branches, or to remove a tree.</p> <p>(3) To remove or modify a flag or banner, a flagpole or sign, or similar object or structure that intrudes into a public place.</p> <p>(4) Where the public place is a road-to take action necessary to protect the road or to remove a hazard to road users.</p> <p>Examples</p> <ul style="list-style-type: none"> 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. 	<p>(1) A hazard exists that is, or is likely to become, a danger to the public.</p> <p>(2) The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place.</p> <p>(3) The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place.</p> <p>(4) A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.</p>	<p>(1) The owner or occupier of the land.</p> <p>(2) The owner or occupier of the land.</p> <p>(3) The owner or occupier of the land.</p> <p>(4) The owner or occupier of the land.</p>

ATTACHMENT 1

Page 2

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
<p>3. Animals that may cause a nuisance or hazard</p> <p>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.</p>	<p>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.</p> <p>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.</p> <p>Examples</p> <p>(1) The slaughtering of animals in a town or urban situation.</p> <p>(2) Keeping an excessive number of insects, birds or other animals.</p> <p>(3) Keeping bees in close proximity to other property.</p> <p>(4) Keeping animals so as to generate excessive noise, dust or odours, or to attract pests or vermin.</p> <p>(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.</p> <p>(6) Failing to deal with a wasp's nest.</p>	<p>The owner or occupier of land or any person apparently engaged in promoting or conducting an activity.</p>

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