Order Making Policy

Policy Number	D5
Responsible Officer(s)	Manager People & Governance
Policy Adopted	January 2001
Last revised date	October 2026
Minutes reference	2026/10-08
Next review date	October 2030
Applicable Legislation	*Local Government Act 1999*

1. POLICY PRINCIPLE

Wakefield Regional Council is committed to providing a safe, healthy and enjoyable environment for its community and, where necessary, to take measures to protect its areas from hazards, using the order making powers available to it under the *Local Government Act 1999* ("the Act').'

2. POLICY OBJECTIVE

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 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 Appendix 1).

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 private road to carry out specified roadworks) and section 218 (power to require the owner of adjoining land to carry out specified work).

3. POLICY DETAIL

3.1 GUIDING PRINCIPLES

When considering making an order within the scope of this policy, Wakefield Regional Council will consider the following principles, which are central to the effective resolution of local nuisances on private land. Each case for the possible use of the order making powers will be considered on its individual merits. Factors that Council will consider include:

- Seriousness of the offence;
- Detraction from the amenity of the locality;
- The offender's past history;
- Consequences of non-compliance;
- Likely effectiveness of the various enforcement options;
- Is the breach significant/substantial?
- Effect on the community and other people;
- Consistency of approach to similar breaches/offences.

3.2 MATTERS TO WHICH THIS POLICY APPLIES

Except in the case of an emergency described below, Council will take reasonable steps, within available resources, to resolve cases of local nuisance and/or low risk hazards by negotiation and agreement before issuing an order. This may include a personal approach by Council officers and/or an informal warning letter prior to commencing the formal order making process.

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

- Giving the person to whom an order is intended to be directed a notice in writing stating the:
  - Proposed action required to rectify the matter;
  - Terms of the proposed order (i.e. what it requires the person to do or refrain from doing);
  - Period within which compliance with the order will be required;
  - Penalties for non-compliance; and
  - Reasons for the proposed action; and
- 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.

3.3 REVIEW RIGHTS

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

3.4 NON-COMPLIANCE WITH AN ORDER

If an order issued under section 254, 216 or 218 of the Act 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 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:

1. fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid; and
2. 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.

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.

3.5 RESPONSIBILITES AND DELEGATIONS

This policy will be enforced by Authorised Persons who have been appointed (in writing) by the Council under section 260 of the Act. Authorised Persons have powers under section 261 of the Act to enforce breach of orders by way of expiation.

Council may also choose to delegate the power to issue orders under sections 254, 216 and 218 of the Act to Council staff, in which case, Council will ensure appropriate delegations are in place.

4. REVIEW

This Policy shall be reviewed every 48 months, or more frequently if required by legislation or Council.

Document history:

1.0	January 2001 – min 262	New Document.
2.0	January 2011 – min 156	Update due to legislative changes.
3.0	September 2013 – min 80	Minor format change & include Responsible Manager.
4.0	November 2014	Policy Numbering System Changed and inclusion of this Document History Table.
5.0	September 2015 – min 66	Heading altered from Introduction to Policy Objective. Deemed minor therefore no public consultation required.
6.0	January 2018	Minor wording changes. Reference to Local Nuisance and Litter Control Act 2016. New template.
7.0	October 2022	Reviewed.
8.0	October 2026	Wording changes. Removal of reference to Local Nuisance and Litter Control Act, s217 and 299 of the Local Government Act.

APPENDIX A –
Extracts from the *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?***
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?*
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).