

Trim Container	FOL/17/1013
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1. PREAMBLE

1.1 Background

With the inception of the new Local Government Act 1999 ('the Act'), Councils can no longer make by-laws that apply to activities undertaken on private land. To address issues covered by the former by-laws, an order making provision has been included in the Act. This allows Council to instruct owners or occupiers of private land to take action required to resolve an issue with the service of an order.

Unlike the blanket prohibition of certain activities that exists through by-laws, orders are intended to apply and be considered on a case by case basis.

1.2 Purpose

This policy covers any issues on public land that may impact on residents within the City of Holdfast Bay (Council).

1.3 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 Schedule identified in the Act.

Sections of the Act to which this Policy also applies are:

- a. Section 299 (Vegetation Clearance)
- b. Section 216 (Power to order an owner of a private road to undertake specified roadwork)
- c. Section 217 (Power to order owner of infrastructure installed on a road to carry out specified maintenance or repair work)
- d. Section 218 (Power to require an owner of adjoining land to carry out specified work)

1.4 Definitions

There are no specific definitions associated with this policy.

1.5 Strategic Reference

Community: Building a healthy, active and resilient community
 Culture: Supporting excellent, efficient operations

2. PRINCIPLES

- 2.1 Council is committed to using the order making powers available to it under the Local Government Act 1999 to meet its obligations to the community, namely:
- a. Ensuring a safe and healthy environment
 - b. Enhancing the quality of life for residents and visitors to the area
 - c. Improving the amenity of the City
 - d. Ensuring all enforcement activities are conducted using natural justice principles and
 - e. Ensuring that complaints requiring the service of an order under the Local Government Act are dealt with in a timely and effective manner
- 2.2 Council will apply the principles of social justice, ecological sustainability, accountability, transparent process and good customer service when undertaking to resolve a nuisance on private land using this Policy.
- 2.3 Council will consider the following factors when determining the merit of serving an order:
- a. Severity of the incident
 - b. Hazard / Danger posed to the Community
 - c. Risk to health and safety of the Community
 - d. Impact on Local Amenity
 - e. Frequency of Occurrence
 - f. Previous attempts to reconcile the situation
 - g. Potential to use other options such as negotiation, mediation, warnings or other more collaborative approaches
 - h. Public interest
 - i. Offender Attitude / Recidivism
 - j. Evidentiary support where potential for the order to be challenged
 - k. Opportunities to take action under alternative legislation
- 2.4 Expiation fees are set in accordance with the Local Government Act.
- a. Penalties under this part do not derogate from the ability to undertake required works and charge accordingly under Section 257 of the Act.
- 2.5 Appeals against an action brought against a person under this policy must be in writing and will be considered by the Chief Executive Officer.
- a. Where appropriate, the Chief Executive Officer may refer the matter to Council.
- 2.6 Orders may be applied to activities as described in the Local Government Act, section 254.

3. REFERENCES

3.1 Legislation

- *Local Government Act 1999*

3.2 Other References