



Order Making Policy

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Responsible Officer(s):	<i>Chief Executive Officer</i>
Council File Reference:	<i>9/63/1.1</i>
Applicable Legislation:	<i>Local Government Act 1999, section 216, 217, 218, 254, 259 and 299</i>
Related Policies:	<i>n/a</i>
Related Procedures:	<i>n/a</i>
Delegations:	<i>Delegation to CEO pursuant to section 216, 217, 218, 254 and 299 of the Local Government Act 1999.</i>

KINGSTON DISTRICT COUNCIL

ORDER MAKING POLICY

1. Introduction

Section 254 of the Local Government Act 1999 provides Council with the power to make orders under certain circumstances.

The Kingston District Council is committed to using the order making powers available to it under the Local Government Act 1999 (“the Act”) in such a way as to facilitate a safe and healthy environment, to improve the amenity of a locality, and generally for the good governance of the area.

This policy is prepared pursuant to Section 259 of the Act and sets out the steps Council will take in the making of orders.

2. Scope

This Policy will apply 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 (refer Attachment 1).

In accordance with the requirements of the Act, this Policy will also apply in respect of orders pursuant to:

Section 216	Power to order the owner of a private road to carry out specified roadwork to repair or improve the land.
Section 217	Power to order the owner of infrastructure in stalled in, on, across, under or over a road, to carry out specified work by way of maintenance or repair work or to remove the structure or equipment to allow the Council to carry out roadwork.
Section 218	Power to order 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.
Section 299	Power to order the owner or occupier of adjoining land to remove or cut back vegetation encroaching onto the relevant land.

3. **Guiding Principles**

For each situation in which the Council is considering using the order making powers, will be considered on its merit. Factors that Council will consider include:

- The severity of the incident or circumstance.
- The hazard or danger posed to the community.
- The risk to health and safety of the community.
- Detraction from the amenity of the locality.
- Repeated occurrence of the activity or incident.
- The impact of any previous actions to deal with the problem.
- The significance of the breach.
- Would an informal warning letter be sufficient?
- Are there any public interest issues?
- Whether there is sufficient evidence upon which Council may rely to exercise its order making powers?
- The Offenders attitude?
- Number of complaints received in respect of the matter.
- Implications of not taking any action.

In the case of Section 299 (Vegetation Clearance Orders) Council will only exercise its order making powers in the most extreme situations where threat of damage to persons or property exist and all other avenues for resolution of the dispute have been exhausted.

4. **Process and Procedure**

Except in the case of an emergency (as described below), Council will take reasonable steps, within available resources, to resolve cases of local nuisance 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 with the formal order making process.

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
 - Terms of the proposed order (ie. 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.

Orders in the case of an Emergency

Council will proceed to make an order without negotiation or notice, in accordance with Section 255(12) of the Act, where Council considers the circumstances or activity is likely to constitute:

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

5. Review Rights

Pursuant to section 256 of the Act, any person to whom an order is issued (including an order issued under sections 254, 216, 218 or 299 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. The Council will ensure that reference to this right of review is included in any order issued.

6 Non-Compliance with an Order

If an order is not complied with within the time frame 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.

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, 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, the person is liable to pay interest and Council may impose a charge over land for the unpaid amount, together with interest, in accordance with section 257(7) of the Act.

Non-compliance with an order of Council is an offence for which a person may incur a statutory penalty provided by 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.

Where an order is issued under Section 217 of the Act, if the order is not complied with within the time specified in the order:-

- Council may carry out the action required by the order and recover the cost of doing so as a debt to the owner; and
- The owner is guilty of an offence and liable to a maximum penalty not exceeding \$5,000.

7. Responsibilities and Delegations

The authority to issue orders in accordance with Sections 216, 218, 254 and 299 of the Act is delegated to Authorised Persons appointed by Council's Chief Executive Officer under delegated authority of the Council.

In the event that the exercise of this delegated authority is to proceed to legal action as a result of non-compliance with the order, pursuant to Section 257 of the Act, the matter will be referred to the Council to determine if legal action is to proceed.

8. Availability of the policy

This Policy will be available for inspection at the Council's principal office during ordinary business hours and published on Council's website www.kingstondc.sa.gov.au. Copies will also be provided to interested members of the community upon request, and upon such payment of the fee set by Council.

9. Council Endorsement of the Policy

This policy was endorsed by Council on 23rd October 2015. Council endorsed the policy following public consultation on its draft policy. Written submissions commenting on the draft policy were invited within 21 days of a notice appearing in the local newspaper, the Coastal Leader. Submissions received were considered and taken into account in preparing this policy.

Future amendments or alterations to this 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.

10. Review and Evaluation

The effectiveness of this Policy shall be reviewed at least once every four years, being the term of Council. The Chief Executive Officer of the Council will report to Council on the outcome of the evaluation and make recommendations for amendment, alteration or a substitution of a new policy.

11. Review Schedule

Action	Date	Resolution Number
Adopted by Council	19 November 2004	2711
Reviewed	21 September 2007	4436
Reviewed	18 June 2010	6697
Reviewed	29 July 2011	7389
Reviewed and approved for public consultation	21 August 2015	9345
Adopted by Council	23 October 2015	9373

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

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
(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?
<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>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>(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>	
4. Inappropriate use of vehicle		
To refrain from using a caravan or vehicle as a place of habitation.	<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>	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).

217 – Power to order owner of infrastructure on road to carry out specified maintenance work or repair work

- (1) A 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 -
 - (a) to carry out specified work by way of maintenance or repair; or
 - (b) to move the structure or equipment in order to allow the Council to carry out roadwork
- (2) If the order is not complied with within a reasonable time fixed by the order –
 - (a) the Council may itself take the action required by the order and recover the cost of doing so as a debt from the owner; and
 - (b) The owner is guilty of an offence and liable to a penalty not exceeding \$5000.
- (3) Subsection (1) and (2) do not apply to the owner of electricity infrastructure, public lighting infrastructure or gas infrastructure in the Commission 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) In this section –

Commission means the Essential Services Commission established under the Essential Services Commission 2002;

Electricity Infrastructure has the same meaning as the Electricity Act 1996;

Gas Infrastructure has the same meaning as the Gas Act 1997, but does not include a transmission pipeline within the meaning of the Petroleum Act 2000;

Owner of a structure or equipment includes a lessee or licensee;

Public Lighting Infrastructure has the same meaning as in the Electricity Corporations (Restructuring and Disposal) Act 1999

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).

299—Vegetation clearance

- (1) A council may, on the application of the owner or occupier of the land (the **relevant land**), by order under this section, require the owner or occupier of adjoining land to remove or cut back vegetation encroaching on to the relevant 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).