



## Order Making Policy

<b>Classification:</b>	Council Policy
<b>Review Frequency:</b>	Once in the Term of Council
<b>Last Reviewed:</b>	August 2015
<b>Review Due:</b>	2019
<b>Responsible Officer:</b>	Chief Executive Officer
<b>Applicable Legislation:</b>	Sections 216, 217, 218, 254 and 259 of the Local Government Act 1999
<b>Related Policies/Procedures:</b>	Delegations Register

### 1. PURPOSE:

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.

### 2. LEGISLATIVE CONTEXT:

2.1 This policy sets out the steps council will take in the making of orders in dealing with hazards on lands adjoining a public place as set out in section 254 of the Act. Examples include (but are not limited to):

- To fill an excavation or prevent drainage of water across a road;
- To construct a retaining wall or to remove or modify fence;
- To fence land to prevent the escape of animals; and
- To remove a structure or vegetation near an intersection.

2.2 In accordance with the requirement 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.

2.3 Local nuisances (other than those found in the Local Government Act) are also contained in the Local Nuisance and Litter Control Act 2016. Nuisance and littering actions that fall within the jurisdiction of the Local Nuisance and Litter Control Act will be dealt with in accordance with the procedures set out in that Act.

### 3. SCOPE:

This policy will apply to the issuing of orders under sections 216, 217, 218 and 254 of the Act.

### 4. GUIDING PRINCIPLES:

When considering making an order within the scope of this policy, council will consider the following principles, which are considered central to the effective resolution of local nuisances on private land:

- 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 offender's attitude?
- Number of complaints received in respect of the matter.
- Implications of not taking any action.

## **5. 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.

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 constitutes, or is likely to constitute:

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

## **6. REVIEW RIGHTS:**

Pursuant to section 256 of the Act, any person to whom an order is issued (including an order issued under sections 216, 217, 218 or 254 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.

## **7. 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(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.

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.

#### **8. 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.

#### **9. AVAILABILITY OF THE POLICY:**

This policy will be available for inspection at the council's principle office, 29 Holland Street Kingston SE, during ordinary business hours and on council's website: [www.kingstondc.sa.gov.au](http://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.