



Development Control Plan For Orders

**ADOPTED BY RESOLUTION OF COUNCIL ON 9 DECEMBER, 1998
AND IN FORCE FROM 8 JANUARY, 1999 PURSUANT TO THE REQUIREMENTS
OF EP&A ACT 1979, AS AMENDED**

Preliminary

This DCP is made in accordance with Section 72 of the EP& A Act as amended and is governed by the requirements of that Act.

Purpose

The purpose of this policy is to specify the criteria which the Council will take into consideration in determining whether or not to give an order under Section 121, Div 2A of part 6 of the Act.

Application

The orders shall apply to:-

- (a) All premises and all areas associated with those premises located within South Sydney area;
- (b) All land located in South Sydney Local Government area to which South Sydney Local Environmental Plan 1998 applies;

Except where otherwise provided or indicated, the Directors of Health and Community Services, Public Works and Services and Planning and Building shall be responsible for the enforcement of the provisions of this Policy.

Procedures for the issuing of Orders

In accordance with the EP&A Act, Councils are required to observe certain procedures before giving orders. In particular Section 121H-121M require that the following be carried out prior to issuing an order namely:

1. Give notice to the persons to whom the order is proposed to be given of its intention to give the order, the terms of the proposed order and the period proposed to be specified as the period within which the order is to be complied with.
2. Indicate that the person to whom the order is proposed to be given may make representations to the Council as to why the order should not be given or as to the terms of or period for compliance with the order.
3. Indicate that the representations are to be made to the Council or a specified committee of the Council on a specified meeting date or to a specified councillor or employee of the Council on or before a specified date being, in either case, a date that is reasonable in the circumstances of the case.

In relation to Building issues representations are made to a staff committee chaired by the Director of Planning and Building or by the Building Manager in his absence and comprise of the area Managers and/or any other specified employee of Council.

In relation to health issues, representations may be made to the District Environmental Health Surveyor in company with the respective Area Health Services Co-ordinator of Council's Health and Community Services Department.

In relation to other issues representations may be made to the Director of Public Works & Services, or in his absence the Assistant Director of Public Works & Services, in company with the respective Branch Manager and/or any other specified employees of the Public Works & Services Department.

In the event that an agreement is not reached at the Staff Committee meeting the persons affected by the order may still exercise their rights pursuant to Section 121ZK of the Act and have the matter determined by the Land and Environment Court.

Also in the event that a failure by Council to properly consider submissions regarding particulars of work, the persons affected may appeal to the Land and Environment Court under Section 121ZM.

Criteria for Consideration

The types of Orders the Planning and Building Department, Public Works & Services Department and Health and Community Services Department are generally involved in, the circumstances under which they are issued and the criteria to be considered if any are listed in the orders schedule attached to this plan. In areas where it is considered that the circumstances for the particular order are self explanatory no additional criteria have been provided.

Penalties

Penalties for non-compliance with the terms of orders issued by Council are prescribed under sections 125 to 127A of EP&A Act and could be as high as 1,000 penalty units (currently a penalty unit is \$110).

Definitions

“Act” means EP&A Act 1979 as amended.

“Land” means any land either privately or publicly owned within the boundaries of South Sydney City Council.

“Land in the immediate vicinity of a public place” means any land either adjacent to a public place or giving legal access to or across any other land to a public place.

“Matter” means the organic or inorganic substances or substances of which physical objects, whether solids, liquids or gases, are composed.

“Physical environmental damage” means the degrading of existing physical surroundings including the land or water.

“Place of shared accommodation” means a boarding house, a common lodging house, a house let in lodging and a backpackers hostel.

“Premises” includes any land (whether or not pertinent to a building), any part of a building and any tent, stall or other structure.

“Protecting public health” means the preservation of the integrity of an area from the spread of infectious disease and the keeping of premises and land free from offensive and unwholesome matter such that the community is safeguarded.

“Public place” means a public road, bridge, jetty, wharf, public reserve, public bathing reserve, public baths, public swimming pool or other place which the public are entitled to use.

“Room for recyclable materials” means a room used for the retention of material which can be recycled.

“Safe or healthy condition” means the absence of any matter, object or thing which is likely to affect in a detrimental manner the health of a community.

“Sewerage system” in relation to any premises means the pipes, fittings and fixtures on the premises which are used or intended to be used for the conveyance of sewage from the premises but does not include a septic tank, an effluent system or a sullage system.

“Surface water” means all water which runs across the surface of the land and which may originate from any source including non-polluted water, water from defective guttering, downpipes or drainage, roof water, water from paved areas, discharges or overflows from swimming pools and water from blocked stormwater easements.

“Unsightly” means visually unpleasing.

“Waste” Means:-

- (a) effluent, being any matter or thing, whether solid or liquid or a combination of solids and liquids, which is of a kind that may be removed from a human waste storage facility, sullage pit or grease trap, or from any holding tank or other container forming part of or used in connection with the human waste storage facility, sullage pit or grease trap; or
- (b) trade waste, being any matter or thing, whether solid, gaseous or liquid or a combination of solids, gases and liquids (or any of them) which is of a kind that comprise refuse from any industrial, chemical, trade or business process or operation, including any building or demolition work; or
- (c) garbage, being all refuse other than trade waste and effluent, and a substance is not precluded from being waste merely because it is capable of being refined or recycled.

“Waste Receptacle” means a container approved by Council, used for the retention and storage of rubbish arising from premises.

“Water supply pipe” means a pipe of approved material which is used to provide water from the Sydney Water Authority water supply system.

“Work” means any activity, process, task or action.



ORDERS SCHEDULE

ORDER NO. 1**To Do What?**

To cease using premises for a purpose specified in the order.

In What Circumstances

- (a) Premises are being used for a purpose that is prohibited
- (b) Premises are being used for a purpose for which development consent is required but has not been obtained
- (c) Premises are being used in contravention of the conditions of a development consent

To Whom?

Owner of premises, or person by whom premises are being used for the purpose specified in the order.

Criteria

- (a) No additional criteria
- (b) If a development application is submitted Council will withhold the issue of the order until its determination, provided the use is considered to be safe in relation to fire or any other safety considerations, the use is not as a place of public entertainment or shared accommodation and unless the use poses a significant and immediate threat to the amenity of the area.
- (c) No additional criteria

ORDER NO. 2**To Do What?**

To demolish or remove a building.

In what Circumstances?

- (a) Building is erected without prior development consent of consent authority (in a case where prior development consent is required)
- (b) Building is or is likely to become a danger to the public.
- (c) Building is so dilapidated as to be prejudicial to its occupants or to persons or property in the neighbourhood.

To Whom?

Owner.

Criteria

- (a) Such an order would be served when the building is built contrary to planning requirements and/or the building is so structurally unsound that it could not be rectified.
- (b) No additional criteria.
- (c) A building in drastic need of repair and not necessarily fully intact in a structural sense (eg missing or partly missing walls and/or roof timbers) and/or the building is unfit for human habitation.

ORDER NO. 3**To Do What?**

Not to demolish, or to cease demolishing a building.

In What Circumstances

- (a) Building is likely to be demolished without prior development consent of consent authority (in a case where prior approval is required).
- (b) Building is being demolished without the development consent of the consent authority or otherwise than in accordance with the development consent in the case where consent is required.

To Whom?

Owner of a building, person likely to demolish or person engaged in demolition.

Criteria

- (a)(b) No additional criteria.

ORDER NO. 4

To repair or make structural alterations to a building.

In What Circumstances?

- (a) Building is or is likely to become a danger to the public.
- (b) Building is so dilapidated as to be prejudicial to its occupants or to persons or property in the neighbourhood.

To Whom?

Owner

Criteria

- (a) No additional criteria
- (b) An occupied building in drastic need of repair will fall under this category as the health of the building's occupants may be affected by such things as dampness, inadequate ventilation and the like.

ORDER NO. 5**To Do What?**

To alter, obliterate, demolish or remove an advertisement and any associated advertising structure.

In What Circumstances?

- (a) The advertisement is unsightly, objectionable or injurious to the amenity of any natural landscape, foreshore, public reserve or public place at or near where the advertisement is displayed.
- (b) The advertisement is displayed contrary to a provision made by or under the Environmental Planning and Assessment Act.
- (c) The advertising structure is erected contrary to a provision made by or under the Environmental Planning and Assessment Act.

To Whom?

The person who caused the advertisement to be displayed or the advertising structure to be erected or the owner or occupier of the premises on which the advertisement is displayed or the advertising structure is erected.

Criteria

- (a) Such an order would be issued if the structure is considered unsightly or objectionable.
- (b) (c) No additional criteria.

ORDER NO. 6**To Do What?**

To do or refrain from doing such things as are specified in the order so as to ensure or promote adequate fire safety or fire safety awareness.

In What Circumstances?

- (a) Provisions for fire safety or fire safety awareness are not adequate to prevent fire, suppress fire or prevent the spread of fire or ensure or promote the safety of persons in the event of fire.
- (b) Maintenance or use of the premises constitutes a significant fire hazard.

To Whom?

Owner of premises or, in the case of a place of shared accommodation the owner or manager.

Criteria

- (a) & (b) Council's fire upgrading guidelines that is current and applicable, based on the use of the premises will be considered when the order is given.

Note: At present, Council has Fire Upgrading Guidelines for boarding houses, residential flat buildings and places of public entertainment.

ORDER NO. 7**To Do What?**

To erect or install on or around a building such structures or appliance as are necessary to protect persons or property on or in a public place.

In What Circumstances?

- (a) Building is about to be erected.
- (b) Building is situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place.
- (c) Building is about to be demolished.
- (d) Work is about to be carried out.
- (e) Work is about to be demolished.

To Whom?

Owner or occupier of land.

Criteria

- (a), (b), (c),
(d) & (e) No additional criteria.

ORDER NO. 8**To Do What?**

Not to conduct, or to cease conducting, an activity on premises (being an activity that is, or is capable of being, the subject of a development consent, whether or not the activity is the subject of a development consent).

In What Circumstances?

The activity constitutes or is likely to constitute:

- (a) a life threatening hazard; OR
- (b) a threat to public health or public safety

and is not regulated or controlled under any other Act by a public authority.

To Whom?

Any persons apparently engaged in promoting, conducting or carrying out the activity.

Criteria

- (a) Such an order would be issued if the fire safety level or any other safety level of the building is considered inadequate.
- (b) no additional criteria.

ORDER NO. 9**To Do What**

To cease the use of a building.

In What circumstances

The use of the building:

- (a) is not consistent with its classification under this Act, the Local Government Act 1993 or the Local Government Act 1919, and
- (b) Constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety, and
- (c) is not regulated or controlled under any other Act by a public authority.

To Whom?

The owner or occupier of the building.

Criteria

No additional criteria.

ORDER NO. 10

To Do What?

To cease the use of premises or to evacuate premises.

In What Circumstances?

A person to whom order No. 6 or 8 is given has failed to comply with the order.

To Whom?

The person to whom order No. 6 or 8 is given.

Criteria

No additional criteria.

ORDER NO. 11

To Do What?

To leave premises or not to enter premises.

In What Circumstances?

A person to whom order No. 6 or 8 is given has failed to comply with the order.

To Whom?

Any person.

Criteria

No additional criteria.

ORDER NO. 12**To Do What?**

To do such things as are specified in the order to restore premises to the condition in which they were before building was unlawfully erected or before work was unlawfully carried out.

In What Circumstances?

- (a) Building has been unlawfully erected and an order no. 2 has been given requiring the building to be demolished or removed.
- (b) Work has been unlawfully carried out.

To Whom?

The owner of the premises, any person entitled to act on a development consent or complying development certificate or any person acting other wise than in compliance with a development consent or complying development certificate.

Criteria

No additional criteria.

ORDER NO. 13

To Do What?

To do such things as necessary to bring into compliance with relevant development standards any building or part of a building that has been unlawfully erected.

In What Circumstances?

Building has been unlawfully erected and does not comply with relevant development standards.

To Whom?

The owner of the premises.

Criteria

No additional criteria.

ORDER NO. 14**To Do What?**

To repair or remove a building.

In What Circumstances?

The building is situated wholly or partly on a public place.

To Whom?

Owner or occupier of building.

Criteria

To alter or repair structures on, over, or under the public way not in accordance with approvals or considered unsafe or dangerous .

Repairs required to private services within a public place such as, but not limited to, sewer services and roofwater/stormwater pipes not covered by lease agreements.

ORDER NO. 15

To Do What?

To comply with a development consent.

In What Circumstances?

The development consent is not being complied with.

To Whom?

Person entitled to act on the development consent or person acting otherwise than in compliance with development consent.

Criteria

A development consent granted by consent authority has not been complied with.

ORDER NO. 16**To Do What?**

To complete development that is subject to a development consent within such time (not being less than 12 months from the date of service of the order) as the consent authority considers reasonable, having regard to all relevant circumstances, including the nature of the development, and including, if the development is the subject of:

- (a) a proposed strata development contract referred to in the strata Schemes (Freehold Development) Act 1973 or the Strata Schemes (Leasehold Development) Act 1986, or
- (b) a development contract registered with a community plan or precinct plan under the Community Land Development Act 1989, the proposals relating to the staged in whom the development is to be effected.

In What Circumstances?

The development has been commenced within the period specified in section 95 (1) but has not been completed within that period.

To Whom?

The owner of the land to which the development consent applies.

Criteria

No additional criteria.

ORDER NO. 17

To Do What?

To carry out works associated with a subdivision.

In What Circumstances?

There has been a failure to carry out the works in accordance with a development consent or an agreement made with the applicant for development consent.

To Whom?

The person required to carry out the works.

Criteria

No additional criteria.