



Validity of Section 124 Orders - Update

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The recent decision of *Bobolas v Waverley Council (No 3)* [2021] NSWLEC 63 has provided further clarity on the validity of orders issued pursuant to Section 124 of the *Local Government Act 1993* ("the **Act**").

Background

Waverley Council issued a 22A order pursuant to s 124 of the Act on the landowners, seeking the removal and disposal of accumulated waste in the outside areas of the dwelling house, and refraining the landowners from keeping waste on the premises outside the dwelling house ("the **Order**"). The landowners failed to comply with the order. Council therefore provided the landowners with a notice ("the **Notice**") proposing to enter onto the land to give effect to the terms of the Order.

The landowners sought judicial review of the Order. Issues were raised as to the validity of the Order, in particular:

- The period given for compliance with the Order before Council exercised its right of entry (7 days) was insufficient;
- That s 200 of the Act precluded Council from entering onto the premises;
- That the Order failed to provide details of the process or pathway that council intended to take to achieve the objectives of the Order; and
- The Notice was not served in accordance with the requirements of the Order, namely the Notice had not been served as the letter had not been received in the post by the landowners.

The Court ultimately determined that the Notice and Order was valid.

Period for Compliance

The Court held that there is no statutory requirement that a period in excess of 7 days is required to permit the Council to exercise its powers under s 678(1) of the Act, and thus the Notice was validly given.

Section 200

The issue had previously been determined in *Bobolas v Waverley Council (No 4)* [2015] NSWCA 337, namely that the power of entry conferred on a council pursuant to s 678 of the LG Act is not qualified by s 200, which deals with the rights of entry and inspection for the purposes set out in Ch 8, Pt 2 of the Act. Council sought to enter the property pursuant to s 678(1); therefore the requirements in s 200 do not apply.

Failure to provide details of proposed steps

There is no statutory requirement relating to the outlining of steps to be taken by the Council if it exercises the power under s 678(1). Council set out the three important steps plainly, being:

- The proposal to enter upon the Premises;
- The date upon which such entry is proposed; and
- The proposal to remove and/or dispose of the material currently upon the Premises in breach of the Order as at the date of entry.

There is no requirement for further detail or description of the steps that the Council proposes to be taken that could reasonably be inferred from the terms of the Order or the circumstances of the case.

Notice not served

Council submitted that the Notice had been affixed to the front fence of the Premises, as well as sent by way of registered post. The registered post was returned to Council with the word 'refused' written across the front of the envelope.

The Court held that it was a requirement of the Order that a Notice be posted by letter, not that it be received. He found that the Notice had been sent by registered post and affixed to the front fence (which was not disputed by the landowners), and that whilst the Order proposed two means of notification, that the landowners were made aware of Council's proposed actions by one of the means of notification and therefore, the requirements of the notice were met..

If you would like advice about anything in this article, please contact [Greg Lee](#) on 02 8235 1254 or your usual ClarkeKann contact.

