

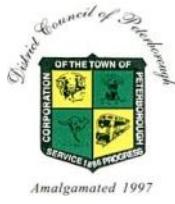


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**DISTRICT COUNCIL
of
PETERBOROUGH**

**LOCAL NUISANCE &
LITTER CONTROL ACT 2016**

Evidence Collection Procedure



DISTRICT COUNCIL of PETERBOROUGH

Evidence Collection Procedure

Adoption Reference:	Council Meeting 18/09/2017 Resolution 75/09
Applicable Legislation:	Local Nuisance and Litter Control Act 2016 This procedure is based on a model procedure prepared by the Local Government Association of SA
Version:	The electronic version of this document is the controlled version. Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the current version.
Accessibility:	This procedure, and all policies and By-Laws, are available for viewing, downloading or printing from Council's website: www.peterborough.sa.gov.au Hard copies can be provided in accordance with Council's Fees and Charges at the Council office at 108 Main Street, Peterborough, SA 5422 during ordinary business hours.
Grievances:	Any grievances in relation to this procedure, or its application, should be forwarded in writing addressed to the Chief Executive Officer of Council.
Review Dates:	

1. PURPOSE AND SCOPE

This procedure describes the methods of evidence collection in relation to suspected breaches of the *Local Nuisance and Litter Control Act 2016* (the Act).

The procedure covers evidence gathering from the commencement of an investigation to the enforcement of the legislation and includes how to conduct interviews, statements, note taking, photographs, sampling and record keeping.

1.1. Responsibility

This procedure has been written for use by authorised officers who carry out investigations and compliance activities under the Act.

Authorised officers are required to act reasonably and transparently, demonstrate good customer service, undertake their responsibilities in a proficient manner and use their judgement where necessary to ensure an outcome in line with legal requirements and council's Enforcement Policy.

1.2. Legislation

Refer to the following sections of the Act:

- Section 14 – Powers of authorised officers
- Section 16 – Provisions relating to seizure
- Section 50 – Evidentiary provisions

Refer to the following sections of the *Local Nuisance and Litter Control Regulations 2017*

- Section 7 – Measurement procedures for determining presence of local nuisance

1.3. Definitions

Site visit – To enter a place for any reasonable and lawful purpose connected with the administration or enforcement of legislation.

Inspection – An examination of premises, a vehicle or business for any reasonable and lawful purpose connected with the administration or enforcement of legislation.

Caution – Official statement given by an authorised officer to inform a person suspected of committing an offence that anything he or she says to the officer may be used in evidence. See paragraph 4.6 of this Procedure.

Premises – any land, building (including residential premises) or place (including a public place, or a movable building or structure); or a part of a premises.

Vehicle – a vessel within the meaning of the *Harbors and Navigation Act 1993*; and a vehicle within the meaning of the *Road Traffic Act 1961*.

2. RELEVANT DOCUMENTATION

Evidence Collection Procedure

3. RECORD MANAGEMENT

All evidence collected in the process of investigating a possible case of material or serious environmental harm, and related correspondence, must be stored in accordance with council's records management protocols as required by Section 125 of the *Local Government Act 1999* and the *State Records Act 1997*.

4. PROCEDURE

4.1. Preparation for an Inspection

See also: Site Visits and Inspections Procedure

Prior to any visit or inspection, carry out any necessary preparatory work that may include:

- checking rights of entry to the site;
- checking ownership of site (Certificate of Title);
- checking past history (including colleagues and SAPOL);
- arranging appointments or obtaining a warrant if necessary. See also: Procedure for Obtaining a Warrant;
- collating existing information and preparing questions to be asked;
- determining who is going to go with you (if anyone) (considering corroboration and WH&S risks);
- checking equipment to be used and assembling all items required for the tasks ahead. Always ensure you have:
 - Identity card;
 - note book/pen;
 - mobile phone;
 - copy of relevant legislation;
 - appropriate equipment for task; e.g. torch, thermometer, hairnet, camera, gloves, etc.;
 - camera, spare battery, memory card, etc.; and
 - personal protection equipment; e.g. visibility vest, safety shoes, sun hat, etc.

Note: that it is imperative that the authorised officer conducting the inspection is aware of the legislative power to undertake the inspection, including the capacity to examine, open, copy or seize evidence during the inspection. Reference should be made to the specific section of the Act relating to powers of authorised officers (Section 14).

4.2 Taking Photographs or Videos

Ensure the photographs or videos capture all the relevant information and are not blurry or out of focus.

Start with a wide angle shot (shop front, business name, street signs).

Filter the following photographs to show close-ups of the specifics you wish to capture in detail.

Photographs can be digital or 35 mm.

Ensure the correct time and date is displayed and, if not, that an appropriate notation is made by the officer.

When printing from the digital camera – ensure the time and date appear.

All photographs must be stored in accordance with Council's Records Management protocols.

4.3 Note Taking

Anything of significance, which occurs in the course of an investigation, should be noted at the time or while the facts are still fresh in your memory (contemporaneously) to provide a permanent on-the-spot record. When giving evidence in Court your original notes may be required.

Notebooks should be bound and pages numbered. There are however certain situations that require that notes be recorded on A4 paper, plan drawings, field receipts, labels, post-it notes, typewritten documents or e-mail.

Details to take note of:

- times and dates when notes are commenced and completed;
- location;
- details pertaining to risk e.g. exposure details, surrounding activities, injury/illness details;
- name, address and other contact details of all persons present (including employees, members of the public and other witness);
- verification of records reviewed; and
- notation of any other persons present (interview situation).

When taking notes:

- entries should be in ink pen;
- erasures should be avoided, alterations should be denoted by a single line through the entry and initialled by the writer;
- entries should be kept in sequence;
- ensure notebook pages are not removed or damaged;
- spaces and/or lines shall not be left blank;
- pages that have space left after the completion of taking notes shall have a diagonal line drawn across the page to prevent additional information being added;
- if possible, notes should be signed by all present to confirm that they are a true record of the event;
- store notebooks in a secure location; and
- upon leaving Councils employment, officers must not take their notebooks.

4.4 Interviews

Interviewing is a conversation with a purpose to learn the facts of an investigation, in particular:

- complainant details (name, address, contact particulars);
- alleged offender (who committed the offence);
- alleged offender details (name, address, contact particulars);
- details of other witnesses (for corroboration);

- alleged offence (has an offence been committed);
- interview location (dates and times);
- incident location details (business name, street address);
- incident occurred (dates and times);
- identification of physical or documentary evidence;
- location of complainant/offender when incident occurred;
- incident details (what happened, people affected, injury/illness details (if applicable)); and
- authority notified (dates and times).

Certain circumstances may require an ad-hoc interview to take place in the field without prior preparation. Ensure during the interview that you obtain all contact details of those involved for any further questions. There also may be the need to caution the person you are interviewing.

4.5 Types of Questions to be Avoided

Multiple Questions – are questions that ask for a number of responses such as “Did you discharge the waste liquid into the stormwater system, and then wash it down with water, then fail to report it to your supervisor?”

Ambiguous Questions – are questions which are unclear such as “During work hours or after work did you or your work colleague discharge the waste into the stormwater system or gutters?”

4.6 Cautioning Suspects

There are two ways of obtaining oral evidence from persons: voluntarily or compulsorily. Voluntary answers given under a caution are admissible as evidence against the person. In most cases, compulsorily given answers are not. Therefore, in most cases it will be appropriate to attempt to obtain voluntary answers from the alleged offender before resorting to statutory powers to compel answers from alleged offenders.

If you have not formally cautioned a person whom you suspect has committed an offence, there is a possibility that any statement they give you will not be admissible in Court.

Therefore, where the nature of the offence under investigation is serious and could result in a Court proceeding, caution suspected offenders about to be questioned in relation to an alleged offence. A caution should be given to an alleged offender as soon as the officer forms the opinion that the person that they are talking to could have committed an offence, to ensure the admissibility of the offence.

Matters to consider in deciding whether the offence could result in a Court proceeding include:

- the seriousness and effect of the offence;
- the intent of the offender;
- the foreseeability of the offence, or the circumstances leading to it; and
- whether there is enough evidence to prove the offence.

If a person under investigation for an offence makes an incriminating statement before there is time to appreciate the essence of the statement, caution the person immediately upon realising its significance.

4.6.1 How to caution

If there is a reasonable expectation that the person being interviewed has committed an offence, issue a caution.

There are a number of forms of a ‘caution’ and the words below represent a good example:

“I am going to ask you some [further] questions in relation to [details of the alleged offence]. You do not have to answer them unless you wish to do so, but if you choose to do so, anything you say will be taken down and may be used in evidence. Do you understand?”

4.6.2 When not to caution

The person need not be cautioned if questions are put to them for other purposes, for example to establish their identity, or the ownership of any vehicle or the need to search them in the exercise of powers of stop and search.

4.7 Compulsory Answers

Under the Act, authorised officers have the power to require persons (suspected offenders or witnesses) to answer questions in relation to investigations being undertaken under the Act. Failure to answer such questions truthfully is often an offence.

These powers can be useful to obtain evidence in circumstances where alleged offenders or witnesses refuse to cooperate voluntarily with your investigation. It is important to remember that, in most cases, you cannot compel a person to answer a question and then use it against them in criminal proceedings in Court.

Reference should be made to Section 14 of the Act (Powers of authorised officers) as the nature of compelling answers under the Act.

4.8 Interpreters

Some interviews will require the assistance of an interpreter, for services available see Translating and Interpreting Services. The interpreter must be briefed on the background information and confidentiality prior to the interview.

4.9 Statements

A statement is an individual’s truthful account of an incident they saw, heard, said etc. A statement should be comprehensive, accurate and always use the witnesses’ own language. When taking a statement the following rules must be followed:

- record the facts of the incident, which accurately reflect what was seen and heard;
- determine the competence of the individual making the statement as this may be later challenged in Court; and
- record the statement by either written or digital recording. Begin recording with dates, times and locations, etc.

The content of a statement should include:

- the full name of the person providing and recording the statement;
- contact details of the person providing the statement;
- relevant background information (e.g. occupation);
- date, day, time, what took place, where it took place, who was involved, what was said and who said it; and
- witness signature on each page.

4.10 Examination and Copying Records

Subject to the Act, authorised officers are permitted to examine any documents or records that they reasonably believe relate to a contravention of the Act.

In addition, authorised officers are also permitted to make copies of those records or documents or any part of them, for that purpose. Authorised officers may also be permitted to take away and retain (for such time as may be reasonably necessary) any such records or documents.

4.11 Collecting Samples

Authorised officer may, for any purpose connected with the administration or enforcement of the Act or with the performance, exercise or discharge of a function under the Act, take and remove samples of any substance, material or thing found in or on a premises or vehicle. An authorised officer may also remove, or seize and retain, any substance, material or thing that has or may have been used in, or may constitute evidence of, a contravention of the Act.

Section 16 of the Act should be referenced when the substance, material or thing that has been seized is to be disposed of.

4.11.1 *Chain of evidence*

When collecting samples or other physical evidence ensure your evidence from the point of collection to transport and storage has not in any way been compromised or tampered with. Ensuring evidence is sealed, photographed if necessary and logged into the Council or laboratory provides a good chain of evidence.

Councils should have a secure evidence room or locker for the storing of physical evidence. This area should only be accessible by a limited number of Council staff and a record should be made each time the area is accessed, including what prompted the access and what occurred during the access.