

District Council of Peterborough



Amalgamated 1997

**DISTRICT COUNCIL
of
PETERBOROUGH**

**LOCAL NUISANCE &
LITTER CONTROL ACT 2016**

**Assessment of Material or Serious
Environmental Harm Procedure**



DISTRICT COUNCIL of PETERBOROUGH

Assessment of Material or Serious Environmental Harm 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

The *Local Nuisance and Litter Control Act 2016* (the Act) contains a referral mechanism to support the delineation between offences under this Act and the more serious offences of causing material environmental harm or serious environmental harm under the *Environment Protection Act 1993* (the EP Act).

Section 29 of the Act requires a council to notify the Environment Protection Authority (EPA) - as soon as practical - if it has reason to believe that an offence committed under section 18 or 22 of the Act has, or may have resulted in, material environmental harm or serious environmental harm within the meaning of clause 5 of the EP Act.

The criteria for referral are aligned with the definition of material environmental harm under the EP Act. Referrals to the EPA are to be made for both EPA licensed and non-licensed sites.

1.1. Responsibility

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

Determination of whether an investigated complaint constitutes a more serious offence under the EP Act must be made by the investigating officer but may include consultation with other authorised officers or management. The EPA must also concur that the referred issue is beyond nuisance and triggers the necessary criteria of material environmental harm.

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

Local Nuisance and Litter Control Act 2016

- Section 29 – Notification to the EPA of serious or material environmental harm

Local Nuisance and Litter Control Regulations 2017

- Division 3

Environment Protection Act 1993

- Section 5 – Environmental Harm

1.3. Definitions

Section 5 of the EP Act provides the following definitions relevant to determining a referral under this Act:

Environmental harm is to be treated as ***material environmental harm*** if:

- it consists of an environmental nuisance of a high impact or on a wide scale; or
- it involves actual or potential harm to the health or safety of human beings that is not trivial, or other actual or potential environmental harm (not being merely an environmental nuisance) that is not trivial; or

- it results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$5,000;

Environmental harm is to be treated as **serious environmental harm** if:

- it involves actual or potential harm to the health or safety of human beings that is of a high impact or on a wide scale, or other actual or potential environmental harm (not being merely an environmental nuisance) that is of a high impact or on a wide scale; or
- it results in actual or potential loss or property damage of an amount or amounts in aggregate exceeding \$50,000.

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. Investigative Procedure

Normal investigative procedures and protocols should be followed as per council's Evidence Collection Procedure.

4.2. Assessing whether environmental harm is to be treated as material or serious environmental harm

The definitions listed in section 1.3 clearly identify the criteria to be applied when assessing whether an incident of environmental harm is of such a category that the EPA should be notified that either *material environmental harm* or *serious environmental harm* exists. The full text of these definitions can also be found under Section 5 (Environmental Harm) of the EP Act.

Material Environmental Harm

With regard to *material environmental harm*, authorised officers must consider whether any of the following circumstances exist before forming their determination:

- is it an environmental nuisance of a high impact or on a wide scale, or
- does it involve actual or potential harm to the health or safety of human beings that is not trivial, or
- does it involve actual or potential environmental harm that is not trivial (i.e. harm that is not merely an environmental nuisance), or
- has it resulted in (or will it result in) actual or potential loss or property damage of a single amount or aggregated amounts in excess of \$5,000

Some examples of *material environmental harm* that the EPA has previously successfully prosecuted are:

- discharge of the gas ethyl mercaptan into the environment
- discharge of 40,000 litres of aluminium sulphate into creek due to failed PVC fitting
- odour release across Adelaide metropolitan area due to venting tanks that had contained crude oil
- escape of toxic fumes from buried containers

Serious Environmental Harm

With regard to *serious environmental harm*, authorised officers will need to consider whether any of the following circumstances exist before forming their determination.

- does it involve actual or potential harm to the health or safety of human beings that is of a high impact or on a wide scale, or;
- does it involve actual or potential environmental harm (i.e. harm that is not merely and environmental nuisance) that is of a high impact or on a wide scale, or
- has it resulted in (or will it result in) actual or potential loss or property damage of a single amount or aggregated amounts in excess of \$50,000

Some examples of *serious environmental harm* that the EPA has previously successfully prosecuted are:

- depositing contaminated soil in fill for housing development at Kilburn
- discharge of 15,000 litres of diesel into Torrens lake due to a faulty pump
- diesel oil spill at Largs Bay
- release of 10 megalitres of winery effluent into the North Para river due to electrical problems with an effluent sump

4.3. Key assessment triggers

High impact / Wide scale

Measured against some of the examples provided above, if an environmental harm is minimal and merely an isolated environmental nuisance, restricted to a small area, or impacting upon just a very small section of the community then it would be considered as a low impact issue on a narrow scale.

A high impact is an impact which is important, notable, or of consequence, having regard to its context or intensity. Whether or not environmental harm is likely to have a high impact depends upon the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, and magnitude of the impacts. A further consideration is the number of complaints received. All of these factors need to be considered when determining whether an action is likely to have a high impact on the environment.

The other element that needs consideration is whether the impact (whether high or not) is on a wide scale. The following considerations may assist in determining a wide scale impact:

- the number of reports being received relating to the incident (when considered spatially)

- reports being made across a wide geographic area (different streets or suburbs for example)
- the potential for non-trivial health impacts over a wide section of the community
- the potential for wide-spread damage to the environment generally (flora / fauna)

Estimating actual or potential loss or property damage relating to material environmental harm

A referral to the EPA only needs to satisfy the lower cost threshold for *material environmental harm* of potential or actual loss or property damage in excess of \$5,000.

Some of the costs to be considered are likely to be related to:

- the remediation or clean-up of an area
- seeking specialised scientific or professional advice
- repairs to property damage such as housing or commercial properties or buildings
- repairs to property damage such as fencing, garaging, mechanical equipment, motor vehicles, trailers etc.

Losses or damage costs should be considered in aggregation, where there are multiple aspects to losses or damage costs, against the \$5,000 threshold.

4.4. Contact with the EPA

Councils seeking to contact the EPA to discuss issues associated with actual or potential material or serious environmental harm, can in the first instance either contact the EPA directly via email epainfo@sa.gov.au or via telephone 8204 2004.

The EPA will assess the information provided by the council and forward to the most appropriate staff member to respond.

4.5. EPA requirements for handover of complaints

Section 29 of the Act requires the council to provide the following information to the EPA as soon as practicable after becoming aware of the actual or potential material or serious environmental harm.

For the purposes of section 29 of the Act, notifications by a council to the EPA should include:

- a) as many of the following details as may be in the possession of the council:
 - (i) any investigation statements from authorised officers, witnesses or suspects;
 - (ii) copies of relevant evidence (for example, images, photographs, video or audio recordings or transcripts, maps, reports of analyses, tests or samples, file notes, exhibit management records and any certificates under section 50 of the Act or other relevant documents, orders, notes or information); and
- b) details as to any limitation of time for prosecution or expiation of offences under the Act; and
- c) details of the application of any relevant prescribed period within the meaning of section 16 of the Act in relation to a substance, material or thing seized under Part 3 Division 3 of the Act.