

*District Council of Peterborough*



*Amalgamated 1997*

**DISTRICT COUNCIL  
of  
PETERBOROUGH**

**LOCAL NUISANCE &  
LITTER CONTROL ACT 2016**

**Obtaining a Warrant Procedure**



# DISTRICT COUNCIL of PETERBOROUGH

## *Obtaining a Warrant 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
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- 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](http://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 details the process for preparing for an application to apply to the relevant authority for a warrant to gain entry to a premises with a warrant.

This procedure has been written for use by Authorised officers who carry out investigations and compliance activities under the *Local Nuisance and Litter Control Act 2016* (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 the council's Enforcement Policy.

### **1.1. Legislation**

This procedure provides guidance on the preparation and application for a warrant under the *Local Nuisance and Litter Control Act 2016*. See Section 14 of the Act for further information

### **1.2. Definitions**

**Affidavit** – A written set of facts given by a person of their own knowledge and sworn before either a Justice of the Peace or a Commissioner for Taking Oaths and Affidavits (usually a Solicitor).

## **2. RELEVANT DOCUMENTATION**

Council's Enforcement Policy  
Warrant Template (Appendix 2)  
Evidence Collection Procedure

## **3. RECORD MANAGEMENT**

All evidence collected in the process of obtaining a warrant, and the warrant when obtained, 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**

It must be remembered that the council officers have the requisite power to enter land for the purposes of undertaking an inspection pursuant to the Act. The application for a warrant is required if reasonable force is necessary to either gain entry or conduct the inspection.

To obtain a warrant, an Authorised Officer will have to prove to a magistrate or justice that there are reasonable grounds to suspect that an offence has been, or is about to be, committed and that a warrant is reasonably required in the circumstances.

Carefully consider all the evidence gathered and assess all other available options in accordance with the council's Enforcement Policy. Discuss the case with your manager and/or council's solicitors in order to establish that an application for a warrant can be justified in the circumstances.

#### **4.1. Preparation for a Warrant**

Prepare an affidavit outlining the grounds upon which a warrant is sought including your attempts to enter and inspect the vehicle or premises, and evidence of conditions warranting inspection.

Affix to your affidavit copies of all relevant notes, letters, notices, risk assessments, expiations, photographs, references to relevant legislation and any other evidence supporting your application for a warrant. If other people have participated in the investigation, ensure their notes are included in your submission.

For the purpose of the provision of original warrants for the SAPOL, locksmith, council file and owner/occupier of the premises/vehicle ensure you have 6 original copies of the warrant template (Appendix 2).

As required, ensure that you update the warrant template to include the correct:

- Statute (i.e. *Local Nuisance and Litter Control Act 2016*);
- terms (e.g. Section 18 of the Act);
- address of the premises/vehicle to which you require entry;
- the time of which you would like the warrant from and the length of time you will need to have it for, i.e. 8.00am till 5.00pm; and
- have either your manager or another Authorised Officer review the template prior to attending court.

*Note: Coordinate your inspection with the SAPOL, locksmith and other assistants for a set date and time.*

#### **4.2. Application for a Warrant**

##### **From a Magistrate**

Attend in person at the relevant Magistrates Court Registry. Advise the administration clerk who you are, who your employer is and that you wish to file an application for a warrant to enter and inspect premises or vehicle.

*Note: it may take some time to get past this stage as it is uncommon for persons other than SAPOL officers to apply for warrants.*

Be prepared to provide at this stage and/or later:

- Completed warrant template (6 copies);
- Affidavit with relevant attachments;
- the relevant legislation; and
- your identification card for the relevant legislation.

Follow the instructions of the Magistrate, and other court officials. You will be required to hand a copy of your documents, affidavit and prepared warrant to the court clerk to provide to the Magistrate. You will then be required to take a seat in the back of the courtroom until the Magistrate is ready to hear your case. In many instances, the matter may be heard in chambers, i.e. in your absence and it may be that the Magistrate only wishes to hear from you in circumstances where there are questions, queries or ambiguities.

You may be required to give evidence on oath in front of the Magistrate. This is not common when an affidavit is prepared, although the Magistrate may seek further clarification on the evidence that you have provided.

Be prepared to be thoroughly cross-examined.

Address the Magistrate as 'Your Honour'.

Ensure you leave the court with at least four signed and sealed original copies of the warrant.

When leaving the courtroom the appropriate etiquette is to turn, face the front of the court and bow towards the magistrate.

### **From a Justice**

When obtaining a warrant from a Justice, they must not be member, officer or employee of the council.

### **4.3. Warrant Refused**

If the warrant is refused, ensure you make clear notes of the reasons provided by the Magistrate and discuss the case with your Manager.

### **4.4. Warrant Obtained**

When the requirement of surprise for the purposes of gaining evidence is not required, it may be appropriate once having obtained the warrant to write to the owner/occupier or responsible person advising when entry will be required.

### **4.5. Gaining Entry with a Warrant**

Conduct your visit at the advised date/time.

Take at least three signed and sealed original copies of the warrant to the inspection (leave a copy with the owner/occupier of the premises and SAPOL).

It is recommended that you visit with a colleague and request the attendance of a SAPOL officer by calling the nearest police station.

SAPOL officers should be present at all occasions where a warrant is executed to ensure the safety of the Authorised Officer and to prevent a breach of the peace. Provide the SAPOL officer(s) with copies of the relevant legislation.

Arrange for a locksmith to attend to assist with gaining entry and to leave the premises secure as on exit.

Ensure the warrant is executed within the period stipulated on the warrant.

Prearrange any other persons required for advice, joint enforcement or actions such as General Inspectors, Family and Community Services Officers, cleaning agencies, etc.

*Note: for coordinated enforcement action a warrant is required under each Act for which powers are to be exercised.*

## APPENDIX 1 – LEGISLATION

Act	Section	Purpose of Warrant	Note
<b>Local Nuisance and Litter Control Act 2016</b>	S14(3)	An authorised officer may only use reasonable force— (a) to enter any premises or vehicle; or (b) to open a part of, or thing in, the premises or vehicle, on the authority of a warrant issued by a magistrate or a justice.	(a) An application for a warrant under subsection (3) cannot be made to a justice who is a member, officer or employee of a council; and (b) a magistrate or justice must not issue a warrant under subsection 3 unless satisfied— (i) that there are reasonable grounds to suspect that an offence against this Act has been, is being, or is about to be, committed; or (ii) that the warrant is reasonably required in the circumstances.

**APPENDIX 2 – WARRANT TEMPLATE**

**SOUTH [Coat of Arms] AUSTRALIA**

**[INSERT NAME OF ACT]**

**WARRANT TO ENTER PREMISES**

**TO:** [Enter name of Authorised Officer], an Authorised Officer/Person pursuant to the [name of Act] for the District Council of Peterborough at 108 Main Street, Peterborough in the State of South Australia.

**PURSUANT TO:** [insert number of section and name of Act] having satisfied me on information given under oath that a warrant is reasonably required to enter premises at [insert address of premises] ('the Land') for the purpose of exercising powers under [insert name of section and name of Act].

**I HEREBY DIRECT** that you [name of Authorised Officer/Person], an Authorised Officer/Person for the District Council of Peterborough, together with such assistants as you may require, are hereby authorised to enter the Land or buildings on the Land between the hours of 9.00am and 5.00pm on [insert day and date], using such force as is reasonably necessary for the purpose of the enforcement and administration of the [insert name of Act], namely [insert details of inspection to be undertaken and reasons, eg to assess adequacy of sanitation on the Land].

**DATED:** ...../...../.....

**SIGNED:** .....