

*District Council of Peterborough*



*Amalgamated 1997*

**DISTRICT COUNCIL  
of  
PETERBOROUGH**

**LOCAL NUISANCE &  
LITTER CONTROL ACT 2016**

**Prosecutions Procedure**



# DISTRICT COUNCIL of PETERBOROUGH

## *Prosecutions 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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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 is a guide for local government authorised officers undertaking prosecution proceedings under the *Local Nuisance and Litter Control Act 2016*.

### **1.1. Responsibility**

This procedure has been written for use by authorised officers who may be involved in prosecution proceedings.

## **2. RELEVANT DOCUMENTATION**

Refer to council's Enforcement Policy.

## **3. RECORD MANAGEMENT**

All documents, notes, photographs and correspondence must be retained and 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 Decision Making**

Officers taking enforcement action should have due regard to council's Enforcement Policy, particularly the 'prosecution' enforcement option.

In most instances, a decision to initiate enforcement action shall only be taken by an appropriately qualified officer and shall first be discussed with the Team Leader/Manager or person with relevant delegated authority.

The final decision to prosecute will usually be taken in conjunction with the council's solicitors.

Any intended prosecution has to cover the following two points in order to succeed:

- proof of the offence - this includes evidence from a site inspection, witness statements, documented risk assessment, etc., to adequately demonstrate non-compliance with statutory requirements. Care should be taken to ensure that evidence is available to establish each 'element' of the relevant offence (refer to the section of the Act creating the offence if unsure); and
- proof of the person (natural person or body corporate) responsible for the offence.

In some situations, a 'caution letter' may be sent to an alleged offender prior to prosecution proceedings being instigated.

Criminal proceedings serve two distinct, but related purposes: firstly to punish an alleged offender for breaches of the criminal law and secondly, to act as a general deterrent to other persons from engaging in similar conduct.

## 4.2 Prosecution Proceedings

Prepare Prosecution information including:

- Brief of Evidence
- Relevant statements
- Relevant exhibits
- Maps and plans (note: maps and plans should indicate whether to scale and highlight significant areas referred to by witness(es), (with an index if beneficial)); and
- Non-relevant statements and documents.

This material should be submitted to your Team Leader/Manager or person with relevant delegated authority for approval and signature.

If a decision to prosecute is made, the material can then be sent to council's solicitors with a covering memorandum.

## 4.3 Brief of Evidence

The Brief of Evidence is a summary of facts of the case, in chronological order. It includes:

- Critical information
- Witness statements
- Prior convictions of the accused (as an appendix)
- Risk Assessment (if applicable)
- Affidavit(s)
- Exhibits

Note: the format of the report is:

- all names in capitals, numbered paragraphs and double spaced
- a chronological table of events may be useful in complex cases.

### ***Critical Information***

- a description of the legislation contravened including a brief summary of the alleged offence(s)
- any statutory notice(s) served and compliance due date
- name, date of birth and address of defendant
- dates to avoid when listing matter in Court
- if 'works in default' have been requested or if works have subsequently been carried out by the owner or the Council

### ***The Alleged Offence***

- the legislation contravened – the legislation quoted here must state the specific section which it is alleged has been breached
- a brief description of the relevant contravention(s)
- date of contravention – this should be given in all cases to enable proceedings to commence within statutory limitations

### ***List of Witness(es)***

- a list of the witness(es) – refer to:
- their attitude, age, character, credibility, reliability and confidence as a witness
- identify conflict, contradictions, inconsistencies, discrepancies in the evidence of the witness(es)

### ***Convictions of Accused***

- relevant prior convictions of accused (as an appendix to the report)

## **4.4 Witness Statements**

### **These may Include:**

- principal witness(es)
- other statements which corroborate principal witness(es), in whole or part
- independent witness(es) and supporting evidence
- expert/professional witness statements
- investigating officer

### **How to Structure an Investigating Officer Statement**

- officer title/designation
- officer qualifications and experience
- officer authorisation
- date, time and place
- purpose of visit (accompanied by....?)
- outline description of premises usage
- outline of what premises comprises
- brief details about what you saw/heard/detected on arrival – e.g. activities, noise, smells, etc. (I was aware...)
- details of who you met/spoke to on arrival (name/title/position)
- details of what was said by you/to you
- information about where you commenced your inspection (I observed...carry out an inspection...I also examined....and confirmed....)
- outline description of the room/area – and any persons present
- detailed information about the offences/conditions (following a logical sequence)
- connecting information – e.g. moving to another area, walking up a staircase, entering a room
- concluding comments/conclusion of the inspection/opinions formed
- details of what was said by you/to you
- details of action taken
- details of the risks assessed (e.g. your documented public health risk assessment – *SA Public Health Act 2011*)
- Information about photos taken (where? by whom?)
- time of leaving site
- details of follow-up action/conversations/interviews
- details of exhibits

**Note:**

- do not go on at length on items which do not prove the offence
- list out the offences before you write the statement
- follow a logical sequence
- link or reference a photo album sequence
- bold headings and numbered, double spaced
- keep the style tight and economical
- ask yourself, what am I trying to prove? (reference each element of the offence)
- make sure relevant notes related to the evidence are in your notebook
- have the legislation in front of you

**4.5 Exhibits**

Exhibits and documentary evidence, upon which the prosecution is to be based. These will be listed in the [Brief of Evidence](#).

**Exhibits may Include:**

- copies of notices
- relevant correspondence
- photographs
- ownership details (of land, vehicles or other property), etc.

**The Format for Exhibits is:**

- the exhibits/original documents should not be submitted with the file – only photographs or copies
- photographs and copy documents must be in the same sequence as mentioned in the statements
- there should be an index of all documents/non documentary exhibits
- indicate in the index which are the copy documents
- ensure that the index refers to witness(es) who refer to or are able to identify a document/exhibit
- identify in the index who is in possession of/will produce the original documents/ exhibits
- the documents should be identified with the same reference used in the statements
- ensure that continuity is proved

Original documents/exhibits should be retained at the council and stored in the council's evidence room/locker until required as evidence for prosecution proceedings.

**4.6 Non Relevant Statements and Documents**

This part of the file should include those statements and documents which are considered to be irrelevant to proving the case. These should be indexed and may include:

- any relevant background information which cannot be included in statement form. e.g. previous convictions/enforcement action/warnings
- any weaknesses in the prosecution case
- any other relevant information which should be brought to the attention of the prosecutor

## **4.7 Appearing in Court**

### **Advice to Witnesses**

A witness must give a truthful account of the facts within their knowledge to assist the person (Magistrate, Judge or Jury) making the decision to arrive at a correct decision.

You will be giving your evidence under an oath or affirmation, and it is therefore a requirement that you tell the truth at all times – even if you think it will be harmful to the council's case.

### **Things to Avoid:**

- lying
- avoiding the truth, telling half truths
- arguing back with the questioner
- arrogant attitude; self-important; having your time wasted type of attitude
- unhelpful
- disinterested
- poorly presented in appearance or manner

### **Things to Achieve:**

- give your evidence to the Magistrate/Judge/Jury and the person asking the questions (i.e. not to a spot on the wall)
- appropriate body language (i.e. upright but relaxed)
- appropriate language (i.e. eliminate or explain technical jargon)
- reduce nervousness (can be reduced by undertaking a 'proofing' with Council's lawyer before the trial and general familiarity with the courtroom environment and procedure)
- keep perspective (know what is important about your evidence and what is not)
- tell Council's lawyer if you have a problem (i.e. a lost document or exhibit, do not try to hide a relevant fact or document and hope that you will not get asked about it during cross-examination – you probably will!)
- answer the question asked
- if you don't understand the question, ask for it to be re-stated
- seek leave to refer to your notes, if required

Note: Leave will be granted if the Magistrate finds the notes were made contemporaneously; or made while the events were fresh in your memory; the document is produced, and/or the original document is available. The cross-examining Counsel might want to inspect your notes.

## **4.8 Cross Examination**

Remember your role – to be helpful at all times, even during cross-examination. You should have nothing to hide.

Note: If Counsel is asking you unfair, inappropriate or inadmissible questions the Prosecutor will object. There is no need for you to defend yourself if the questioning is fair. Remember the questioning may be vigorous but that does not make it unfair.

This is your chance to tell the story again. If the cross-examiner is going over and over the same ground repeatedly, you should be pleased not annoyed. It is your opportunity to tell the

Magistrate/Judge/Jury the facts again and impress upon them that you are a witness in whom they can feel confident.

You will never convince the cross-examiner that you are right and they are wrong, so don't waste your time trying. The person who needs to be convinced is the trier of fact, so put your energy where it is best utilised.

Dealing with allegations - if the other party maintains a version of facts which differ from your evidence then they must put their version to you during cross-examination. If you do not agree with what is put to you, simply say so. A simple answer will suffice.

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