



*Agriculturally rich – Naturally beautiful*

# COUNCIL POLICY

## Internal Review of a Council Decision

<b>Policy Number:</b>	PO037		
<b>Strategic Plan Objective</b>	Meet all legislative and compliance responsibilities		
<b>Policy Owner:</b>	Chief Executive Officer	<b>Record Number:</b>	16/13932[v5]
<b>Responsible Officer:</b>	Governance Officer	<b>Minute Reference:</b>	055/2017 (08/03/2017)
<b>Date Adopted:</b>	08/03/2017	<b>Next Review Date:</b>	March 2020

### 1. POLICY OBJECTIVES

Council is committed to ensuring its customers are provided with an open, responsive and accountable process for reviewing grievances.

The aim of this policy is to provide a fair, consistent and structured process for Council's customers if they are dissatisfied with a decision made by:

- The Council;
- Employees of the Council;
- Other persons acting for or on behalf of the Council;

in accordance with Section 270 of the Local Government Act, 1999.

### 2. SCOPE

2.1 This policy applies:

- i) When a request for review of a decision is received;
- ii) When a Complaint escalates to Tier 3 under Council's Complaint Handling Policy, PO 147;
- iii) To all personnel who may be involved in receiving and/or dealing with an application for review of a Council decision under this policy for or on behalf of the Council.

2.2 Requests to review matters that are not Council's responsibility, such as disputes between neighbours, civil liability matters and matters already being dealt with through the Court process, will not be handled under this policy.

2.3 Requests to review decisions relating to other legislation that has its own prescribed appeal processes such as:

- Objections to valuations made by a Council;
  - Appeals against orders made pursuant to section 254 of the Local Government Act;
  - Development matters;
  - Freedom of Information matters;
  - Dog and cat management matters;
- will not be handled under this policy, unless the matter(s) falls outside of the available statutory appeals processes.

### 3. DEFINITIONS

Definitions are provided in Attachment 1.

#### 4. POLICY STATEMENT

Council has a “Three Tier Process” for managing customer complaints, as set out in item 4.2 of Council’s Complaint Policy PO147. An internal review is the Third Tier in Council’s complaints handling process.

The Internal Review of Council a Decision Policy commences when:

- A written request for the review of a decision is received, or
- A complaint escalates to Tier 3 under Council’s Complaint Policy.

There are five fundamental principles that underpin Council’s approach to handling requests for service, complaints and decision reviews. They are:

- Fairness: treating complainants fairly with impartiality, confidentiality and transparency at all stages of the process;
- Accessibility: ensuring broad public awareness about Council’s policy and a range of contact options;
- Responsiveness: ensuring that sufficient resources and well trained staff are provided and that systems are reviewed for improvement;
- Efficiency: complaints will be resolved as quickly as possible, while ensuring that they are dealt with at a level that reflects their complexity;
- Integration of different areas of Council where the complaint overlaps functional responsibilities.

An application for a review of a Council decision provides Council with an opportunity to revisit a decision which has aggrieved a customer(s). This may include an individual or a group, ratepayer, resident or business owner. It may also include a person who is not the direct subject of the decision (for example, where a Council issues a permit for a person to keep more than the maximum number of dogs permitted under a by-law, a neighbour may seek an internal review of the decision). Council will determine whether a person has sufficient interest in a matter to apply for an internal review of a decision, on a case-by-case basis.

##### 4.1 Internal Review of a Council Decision Process

An application for review must be in writing and set out the reasons why the Applicant believes that the decision is wrong and may also include new, relevant information or evidence to support the application. A person can make an application in a number of ways:

- Via Council’s Website
- Email;
- Letter;
- Fax;
- Visit a Council customer service office.

No one is excluded from lodging an application for review because of any difficulties they may have representing themselves. All Council employees will offer assistance where appropriate and, upon request, provide assistance in documenting the reasons for the review when warranted. Access to interpreters, aids or advocates will be arranged by Council staff when necessary.

Everyone will be treated equally, in accordance with good administrative practice. Council will ensure that:

- That there is equal opportunity to make an application for review of a decision covered by this procedure;
- An unbiased assessment is undertaken;
- Decisions are based on sound evidence;

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- Applicants receive information about the outcome of the review.

### 4.2 Internal Review Contact Officer

Council's Governance Officer is the Internal Review Contact Officer (IRCO). In the absence of the Governance Officer, the Chief Executive Officer (CEO) will appoint an acting IRCO. In the case where the request for review relates to a decision made by the CEO, the Mayor will appoint an acting IRCO in the absence of the Governance Officer.

The IRCO is the initial point of contact for Applicants and is responsible for:

- Explaining the process for review to the Applicant and exploring any alternative options to resolve the matter;
- Acknowledging receipt of the written application within ten business days;
- Ensuring that a register of all applications, including review outcomes, is maintained;
- Outlining the timeframes involved and the action to be taken;
- Undertaking a preliminary investigation to determine what actions have already been taken to try to resolve the matter;
- Keeping the Applicant informed of progress as agreed with the Applicant;
- Ensuring adequate records are maintained;
- Reporting to Council on an annual basis regarding the number and nature of applications received;
- Consulting with the CEO, Mayor and/or Elected Council (as appropriate under this policy) to determine how the review will be handled.

All applications are to be referred to the IRCO immediately.

### 4.3 Assignment of Applications for Review

The Elected Council is the Reviewer and/or a person appointed by the Elected Council as the Reviewer, when the decision being reviewed was made by the Elected Council or a Committee of the Council.

In other circumstances the Reviewer is the CEO and/or a person appointed by the CEO as the Reviewer.

In the case where the request for a review under this policy relates to the review of a decision made by the CEO, then the Mayor will be the Reviewer and/or a person appointed by the Mayor.

### 4.4 Reviewer's Role

The role of a Reviewer is to review the decision in question to ensure that the decision-maker complied with the following requirements and made the best possible decision in the circumstances:

- The decision was within delegated authority;
- All relevant matters were considered;
- The decision was made based on good faith and for proper purposes;
- The findings were based on evidence;
- The decision was reasonable;
- The complainant was treated with fairness and in keeping with the principles of natural justice;
- That a discretionary power was not exercised at the direction of another;
- Existing policies were adequately considered and applied.

The Reviewer will observe the principles of procedural fairness (also called 'natural justice') when undertaking the Internal Review of Council Decision process including:

- Allowing the Applicant to put their case forward, including the opportunity to provide all relevant evidence, both documented and verbal;
- Ensuring that the Reviewer does not have a personal interest in the outcome (is not biased);
- Acting only on proper evidence that is capable of proving the case;
- Ensuring that a decision-maker does not exercise a discretionary power at the direction of another person;
- Ensuring that those who may be affected by a decision are accorded procedural fairness, which includes the principles of natural justice.

#### 4.5 Decision Review

The Reviewer will consider all the information and material that was before the original decision-maker and any additional relevant information or material provided by the Applicant and determine whether a different decision would be more appropriate, based on the evidence.

This means the reviewer will do more than simply consider whether the decision is legally and procedurally correct. The reviewer will also consider whether a different decision would be better, based on the evidence. The process of merits review, as described above, will typically involve a review of the facts that support a decision, including any new evidence that may come to light.

The Reviewer will provide the Applicant with reasons for their decision.

#### 4.6 Rates or Service Charge Review Application

Requests for a review that relate to the impact of Council rates or service charges will be dealt with as a matter of priority and in consideration of Council's Rates Relief Policy PO060.

#### 4.7 Remedies

Possible remedies include:

- An explanation;
- An admission of fault;
- A change to policy, process or practice;
- A correction to records;
- Disciplinary action;
- Referral of a matter to an external agency for further investigation or prosecution.

The remedy may be one, or a combination of actions.

Where a review of a decision upholds the Applicant's grievance Council will, where reasonably practicable, remedy the situation in a manner which is consistent and fair for both Council and the Applicant. The solution chosen will be proportionate and appropriate to the circumstances.

As a general principle the Applicant should, so far as possible, be put in the position they would have been in, had things not gone wrong. This may mean providing the desired service or changing a decision. Sometimes, however, it may only be possible to offer an apology.

Compensation may only be offered in cases where the loss or suffering is considered substantial. Only the CEO is authorised to offer financial compensation and the CEO must consult with the Local Government Association Mutual Liability Scheme before doing so, in relation to all civil liability matters. In the case where the Mayor is the Reviewer, the Mayor must consult with the Local Government Association Mutual

#### 4.8 Alternative Remedies

The Reviewer may seek to use alternative dispute resolution methods, such as mediation, to resolve grievances in circumstances where it is deemed by the Reviewer to be the most appropriate course of action and the Applicant agrees. Costs and expenses relating to alternative dispute resolution methods will be shared equally between the Council and the Applicant.

#### 4.9 Complainant's Right to Seek Other Forms of Resolution

While Council prefers to work with its customers to resolve grievances quickly and effectively, an Applicant retains the right to seek other forms of resolution, such as contacting the Ombudsman, or taking legal action at any time. As a general rule, the Ombudsman prefers a grievance to be addressed by Council in the first instance, unless this is not appropriate in the circumstances.

When advising an Applicant of the outcome of an investigation under this policy, Council will provide information about alternative remedies, including any rights of appeal and the right to make a Complaint to an external agency such as the SA Ombudsman.

#### 4.10 Privacy and Confidentiality

Applicants have a right to expect that their grievance will be investigated in private, to the extent possible. The identity of Applicants will be made known only to those who need to know in the process of investigating and responding to the Applicant. The Applicant will not be revealed or made public by the Council, except where required by law.

All grievances lodged with Council are subject to the Freedom of Information Act 1991 and confidentiality cannot be guaranteed under the provisions of that legislation.

#### 4.11 Timeframes

The IROC will acknowledge an application for review within ten business days.

Council will endeavour to ensure that a review of the original decision will be completed within twenty one business days, however if the decision relates to a more complex issue, the review may take longer.

Applicants will be advised of the likely timeframe required to investigate and resolve their grievance and will be kept updated as to progress where necessary.

Request for reviews under this policy must be received within six months of the date of the decision requiring review.

The Reviewer may exercise discretion to accept requests for a review under this policy where the decision requiring review occurred more than six months ago, following consideration of a written request to the Reviewer from the Applicant. The written request from the Applicant must set out the reason(s) why the request is being made more than six months after the decision was made.

#### 4.12 Refusing Application for Review

The Reviewer may refuse to consider an application for review if:

- The application is made by an employee of the Council and relates to an issue concerning his or her employment;
- It appears that the application is frivolous or vexatious;
- The Applicant does not have a sufficient interest in the matter.

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Reasons for the refusal will be documented and provided to the Applicant.

### 4.13 Using Grievances to Improve Service Provision

In addition to making changes to policies, processes and practices where appropriate, Council will review and evaluate the information gained through its Internal Review of a Council Decision processes on an annual basis to identify systemic issues and improvements to service provision.

Where appropriate, Applicants will be provided with an explanation of changes proposed or made as a result of the review process.

### 4.14 Reporting

Documentation relating to requests for review under this policy will be recorded in Council's records management system.

On an annual basis Council will initiate and consider a report that relates to:

- The number of requests for review under this policy;
- The kinds of matters to which the requests relate;
- The review outcomes;
- Information on how outcomes have been used to improve service provision;
- Other matters as prescribed by the regulations.

This information will be included into Council's Annual Report.

### 4.15 Availability of the Policy

This Policy will be available for inspection at the Council's Offices during ordinary business hours and via the [Council's website](#). Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's [Fees and Charges Register](#).

## 5. **REVIEW**

This policy will be reviewed every three years and as necessary in consideration of any changes to legislation and relevant standards, codes and guidelines.

## 6. **TRAINING**

Persons responsible for carrying out reviews under this policy will be appropriately trained in keeping with the nature of complaints they are expected to resolve.

Training needs will be identified through the performance review, audit and training needs analysis processes. Training will also occur and as necessary in response to changes to legislation and relevant standards, codes and guidelines.

## 7. **RELATED COUNCIL POLICIES AND DOCUMENTS**

PO060 Rates Relief Policy  
PO063 Records Management Policy  
PO134 Whistleblowers Policy  
PO147 Complaints Policy  
PO148 Fraud and Corruption Prevention Policy  
Code of Conduct for Council Members  
Code of Conduct for Council Employees

## 8. **REFERENCES AND LEGISLATION**

Local Government Act 1999  
Australian Standard ISO 10002-2006, Customer satisfaction – Guidelines for Complaint Handling in Organisations  
Ombudsman SA RIGHT OF REVIEW – An audit of Local Government Internal Review of Council Decisions Procedures – November 2016  
Ombudsman SA VALUING COMPLAINTS – An audit of Complaint handling in South

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Australia – November 2011

The Commonwealth Ombudsman's Better Practice Guide to Complaint Handling 2009

Protocol – Ombudsman Enquiry Procedure

LGA Internal Review of a Council Decision: Model Policy and Procedure

## 9. COUNCIL DELEGATION

<b>Details of Delegation:</b>	Paragraph 135 Procedures for Review of Decisions and Requests for Service
<b>Delegate:</b>	Chief Executive Officer

## 10. VERSION HISTORY

<b>Archived Policy Name</b>	<b>Policy Number</b>	<b>Date Adopted</b>	<b>Last Reviewed</b>
Internal Review of Council Decisions Policy	PO037	07/03/2003	08/04/2008
Internal Review of Council Decisions Policy	PO037	08/04/2008	08/06/2010
Internal Review of a Council Decision Policy	PO037	08/06/2010	13/03/2013
Internal Review of a Council Decision Policy	PO037	13/03/2013	11/05/2016
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**DEFINITIONS**

Applicant	The party lodging the requests for review. Examples include residents, ratepayers, members of a community group, users of Council facilities and visitors to the area.
Business Day	A day when the Council is normally open for business.
Council	The Yorke Peninsula Council
Decision Maker	The individual or entity responsible for the decision under review.
Employee(s)	All personnel undertaking tasks/duties for and/or on behalf of the Yorke Peninsula Council, including persons employed directly by the Council in a full time, part-time or casual basis under an employment contract, volunteers, contractors, agency personnel and work experience placements.
Reviewer	The individual or entity responsible for resolution of a request for review of a decision under this policy.