



COUNCIL POLICY

Internal Review of a Council Decision

Policy Number:	PO037		
Strategic Plan Objective	5.3 Meet all legislative and compliance responsibilities with Council's internal controls		
Policy Owner:	Chief Executive Officer	Record Number:	16/13932[v7]
Responsible Officer:	Governance Officer	Minute Reference:	084/2020 (13/05/2020)
Date Adopted:	13/05/2020	Next Review Date:	May 2024

1. POLICY OBJECTIVES

The Yorke Peninsula Council (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 (the Act).

2. SCOPE

2.1 This policy applies:

- i) When a request for review of a decision is received;
- ii) When a Complaint escalates to Level 3 under Council's Complaints Policy PO147 (Complaints Policy);
- 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 Council;
- Appeals against orders made pursuant to section 254 of the 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 the Complaints Policy. An internal review is the third tier, Level 3 - Internal review of a Council decision by statutory process.

This Policy commences when:

- A written request for the review of a decision is received, or
- A complaint escalates to Level 3 under the Complaints 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 policies and a range of contact options;
- Responsiveness: ensuring that sufficient resources and well trained personnel 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;
- Liaison: between 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 person(s) making the application (Complainant) believes that the decision is wrong and may also include new, relevant information or evidence to support the application.

A Complainant can make an application in a number of ways:

- Via Council's Website;
- Email;
- Letter;
- Fax;
- Visit a Council 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, including, upon request, providing assistance in documenting the reasons for the review request. Access to interpreters, aids or advocates will be arranged by Council employees when necessary.

Everyone will be treated equally and Council will ensure that:

- That there is equal opportunity to make an application for review of a decision covered by this policy;
 - An unbiased assessment is undertaken;
 - Decisions are based on sound evidence;
 - Complainants receive information about the outcome of the review.
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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 Complainants and is responsible for:

- Determining whether or not the decision is subject to review under this policy;
- Working in conjunction with the appropriately delegated person to determine how the review will be handled;
- Ensuring that applications are properly registered within Council's records management system and assigned;
- Explaining the process for review to the Complainant and exploring any alternative options to resolve the matter;
- Establishing the time of next contact;
- Ensuring receipt of the written application is acknowledged within ten business days;
- Outlining the timeframes involved and the action to be taken;
- Undertaking a preliminary investigation to determine what actions have already been taken what action is required to try to resolve the matter;
- Ensuring that relevant information and review outcomes are properly registered within Council's records management system;
- Keeping the Complainant informed of progress as agreed with the Complainant;
- Preparing the report required under clause 4.14 for consideration by the Council;
- 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 as a matter of urgency.

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

- Allowing the Complainant to put their case forward, including the opportunity to provide all relevant evidence, both documented and verbal;
- Informing the Complainant of the proposed outcome of the review, allowing them to have the opportunity to make submissions to the reviewer on the outcome and have these submissions taken into account;
- 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 Complainant 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 Complainant with reasons for their decision.

4.6 Rates or Service Charge Review Application

Requests for a review that relates 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 Complainant's grievance Council will, where reasonably practicable, remedy the situation in a manner which is consistent and fair for both Council and the Complainant. The solution chosen will be proportionate and appropriate to the circumstances.

As a general principle the Complainant should, so far as reasonably 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 (LGAMLS) 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 LGAMLS in relation to all civil liability matters.

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 Complainant agrees. Costs and expenses relating to alternative dispute resolution methods will be shared equally between the Council and the Complainant.

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, a Complainant retains the right to seek other forms of resolution, such as contacting the Ombudsman SA, 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 a Complainant 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 Ombudsman SA.

4.10 Privacy and Confidentiality

Complainants have a right to expect that their grievance will be investigated in private, to the extent possible. The identity of a Complainant will be made known only to those who need to know in the process of investigating and responding to the Complainant. The Complainant 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 Complainant. The written request from the Complainant 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 it relates to an issue concerning his or her employment;
- It appears that the application is frivolous or vexatious;
- The Complainant does not have a sufficient interest in the matter.

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

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, Complainants 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 (including file notes, photographs and any other related correspondence) 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 is be available for inspection at Council offices during ordinary business hours and via the [Council's website](#). Copies will also be provided to the public upon request, and a fee may be payable in accordance with the Council's [Fees and Charges Register](#).

5. **REVIEW**

This policy will be reviewed every four years and as deemed necessary in consideration of any changes to legislation, standards, codes, guidelines, audit findings and/or corrective actions/controls arising from risk assessment.

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**

PO014 Code of Conduct Policy
 PO060 Rates Relief Policy
 PO063 Records Management Policy
 PO147 Complaints Policy
 PO146 Support Disciplinary and Performance Management Policy
 PO148 Fraud and Corruption Prevention Policy
 PO171 Public Interest Disclosure Policy
 PFC147 Process for Managing Customer Complaints

8. REFERENCES AND LEGISLATION

Local Government Act 1999
 Ombudsman Act 1972
 Independent Commissioner Against Corruption Act 2012
 Public Interest Disclosure Act 2018
 Freedom of Information Act 1991
 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 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

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

10. VERSION HISTORY

Archived Policy Name	Policy Number	Date Adopted	Last Reviewed
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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ATTACHMENT 1

DEFINITIONS

Business Day	A day when the Council is normally open for business.
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.
