



COUNCIL POLICY

Internal Review of a Council Decision

Policy Number:	PO037		
Strategic Plan Objective:	5. Responsible Governance and Leadership		
Policy Owner:	Chief Executive Officer	Record Number:	16/13932
Responsible Officer:	Governance Officer	Minute Reference:	211/2024 (14/08/2024)
Date Adopted:	14/08/2024	Next Review Date:	August 2028

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, subject to review under this policy, made by:

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

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

2. SCOPE

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, available via Council's website (www.yorke.sa.gov.au) (Complaints Policy);
- iii) To all persons 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.

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.

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

- Objections to valuations made by Council;

- Orders made pursuant to section 254 of the Act (where a Council may order a person to do or to refrain from doing certain specified things);
- Litter abatement notices;
- Expiation notices;
- Development matters;
- Freedom of Information matters;
- Dog and cat management matters;

will not be handled under this policy. Such matters that fall outside statutory appeals procedures will be considered for a review under this policy on the merits of the individual application. This policy cannot override or operate inconsistently with other legislation/statutory processes.

3. DEFINITIONS

Refer to Attachment 1.

4. POLICY STATEMENT

Council has a “Three Tier Process” for managing customer Complaints, as set out in Clause 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 persons who make a Complaint (Complainant(s)) 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.

4.1. Internal Review of a Council Decision Process

A person with a Sufficient Interest in a Decision, may make a written application for a review of a Decision.

A person who is not the direct subject of a Decision may have a Sufficient Interest in a Decision (e.g. a person may have a Sufficient Interest in a Council Decision regarding the number of dogs which may be kept within a neighbour’s property).

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.

An application for a review must be in writing and set out the reasons why the 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 (www.yorke.sa.gov.au);
- Email;
- Letter;
- Visit a Council office.

In accordance with the Act, an application for review must be accompanied by the prescribed fee. The fee to be paid is specified in Council's R011 Fees and Charges Register, available via Council's Website (www.yorke.sa.gov.au). Council may, as it thinks fit, reduce, waive or refund (in whole or part) the fee. Any request to reduce, waive or refund the fee (in whole or part) must be made in writing and provide a reason(s) as to why.

No one is excluded from lodging an application for review because of any difficulties they may have representing themselves. Council Employees will offer assistance where appropriate and as requested, when circumstances warrant, in documenting the reasons for the review request. Access to interpreters, aids or advocates will be arranged by Council Employees when necessary, to ensure that Complainants are treated equitably and have access to the review process.

Everyone will be treated equally and Council will ensure 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.

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 Complainants and exploring any alternative options to resolve matters where possible, such as alternative dispute resolution process prior to an application for review;
- Establishing the time of next contact;
- Ensuring receipt of written applications are acknowledged within ten Business Days;

- Outlining the timeframes involved and the action to be taken in the first instance;
- Undertaking a preliminary investigation to determine what actions have already been taken and 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;
- Preparing the report required under clause 4.14 for consideration by the Elected Body;
- Consulting with the CEO, Mayor and/or Elected Body (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.

Where a person(s) seeking Review of a Council Decision attends a Council office personally, or enquires by telephone, the IRCO will discuss this policy with the person(s) and explain that an application for review must be lodged in writing.

4.3. Reviewer

When the Decision being reviewed was made by the Elected Body or a Council Committee, the Elected Body is the Reviewer or, alternatively, the Reviewer may be an external person or entity/body, as determined by the CEO, who will report the outcome of the review to the Elected Body. In the case where the Reviewer is an external person or entity/body, the Elected Body will subsequently consider the outcome of the review and determine whether to affirm, vary or revoke the reviewed Decision.

In other circumstances the Reviewer is the CEO and/or a person(s)/entity 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(s)/entity appointed by the Mayor.

An external Reviewer cannot vary or revoke a Decision made by or on behalf of Council.

4.4. Reviewer's Role

The Reviewer will:

- Undertake a merits review of the Decision considering all materials and information that were available to the original Decision Maker and any additional relevant material and information which has been provided/become available during the course of the review;
- Stand in the shoes of the original Decision Maker and determine the Decision appropriate on the basis of the relevant circumstances and available information and materials;
- 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.
- Ensure that the Decision Maker:
 - Made the best possible Decision in the circumstances;
 - Acted within delegated authority;
 - Considered all relevant matters;
 - Made the Decision based on good faith and for proper purposes;

- Based the findings upon evidence;
- Made a reasonable Decision;
- Treated the Complainant with fairness and in keeping with the principles of procedural fairness (also called natural justice);
- That a discretionary power was not exercised at the direction of another;
- Existing policies were adequately considered and applied.
- Observe the principles of procedural fairness when undertaking a review.
- Provide the Complainant with reasons for their Decision.

4.5. Providing Procedural Fairness

To observe the principles of procedural fairness:

- A Complainant is entitled to put forward their case, including information and materials in support of the application for review. Any information/materials in support of the application must also be submitted in writing. No one is excluded from putting forward information/materials in support of their application because of any difficulties they may have representing themselves.
- Council Employees will offer assistance where appropriate and as requested, when circumstances warrant, in putting forward information/materials in support of a request for a review under this policy. Access to interpreters, aids or advocates will be arranged by Council Employees when necessary to ensure that Complainants are treated equitably and have access to the review process;
- Complainants will be informed 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;
- The Reviewer will:
 - Not have a personal interest in the outcome (will not be biased);
 - Not exercise a discretionary power at the direction of another person;
 - Ensure that those who may be affected by a Decision are accorded procedural fairness.

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, in consideration of Council's Rates Relief Policy PO060 and, if appropriate, addressed through the provision of relief or concessions under the Act.

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 to an external person(s)/body/entity.

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 body/entity such as the Ombudsman SA.

4.10. 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 identity of the Complainant(s) will not be revealed or made public by the Council, except where required by law.

Section 90 of the Act requires that meetings of the Council are held in public, except in special circumstances (as listed in Section 90). For this reason, where the Elected Body is the Reviewer, confidentiality cannot be guaranteed under the provisions of this legislation.

Also, 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 IRCO will acknowledge an application for review within ten Business Days.

Council will endeavour to ensure, as best as is reasonably practical, that a review of the original Decision is completed within 21 Business Days, however if the Decision relates to a more complex issue, or requires review by the Elected Body or an external person(s)/entity/body, the review may take longer.

Complainants 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 IRCO, Reviewer or a person assigned to consider the application may refuse to consider an application for review if:

- The application is made by a Council Employee and it relates to an issue concerning their employment;
- It appears that the application is Frivolous or Vexatious;
- The Complainant does not have a Sufficient Interest in the matter;
- The subject matter of the Decision for which a review has been requested, has been, or is already the subject of a review by Council or an investigation, inquiry or review by another body/entity;
- The application for review relates to a Decision to refuse to deal with, or a determination to take no further action in respect of a Complaint relating to the Behavioural Standards for Council Members, available via The South Australian Government Gazette website (www.governmentgazette.sa.gov.au);
- The application for review relates to a recommendation of the South Australian Ombudsman under Part 1 of the Act ('Member integrity—complaints, investigations and Proceedings').

Where a matter has been referred to the LGAMLS in respect to a civil liability claim or potential civil liability claim against the Council, an application for review of a Decision in connection with that claim or action (including the Decision to refer the matter to the LGAMLS) will be Vexatious.

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 consider/identify systemic issues and improvements to service provision. This will be undertaken as part of Council's Annual Report process.

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

4.14. Reporting

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 any outcomes that have been used to improve service provision;
- Other matters as prescribed by legislation.

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

5. COMPLAINTS

Complaints about this policy can be made in writing to Council's Governance Officer and will be managed in accordance with Council's Complaints Policy PO147, available via Council's Website (www.yorke.sa.gov.au).

6. 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.

7. TRAINING

Council is committed to supporting Employees in complying with this policy.

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

Training needs will be reviewed as necessary in consideration of any changes to legislation, relevant standards, codes, guidelines, audit findings and/or corrective actions/controls arising from risk assessment.

8. RECORDS

Records will be maintained as required by Council's Records Management Policy PO063 and relevant legislation.

9. RELATED COUNCIL POLICIES/PROCEDURES AND DOCUMENTS

PO014 Employee Behavioural Standards Policy

PO018 Hardship Policy for Residential Customers of Minor and Intermediate Water Retailers

PO060 Rates Relief Policy

PO063 Records Management Policy

PO075 Request for Service Policy

PO147 Complaints Policy

PO146 Support Disciplinary and Performance Management Policy

PO148 Fraud, Corruption, Misconduct and Maladministration Prevention Policy

PO171 Public Interest Disclosure Policy

PO179 Council Assessment Panel Review of Decision of Assessment Manager

PO203 Council Member Behavioural Management Policy

PR152 Public Interest Disclosure Procedure

IS126 Water Services Customer Charter

PlanSA Assessment Panel Members – Code of Conduct

10. 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

Planning, Development Infrastructure Act 2016

Essential Services Commission Act 2002

Expiation of Offences Act 1996

Dog and Cat Management Act 1995

Water Industry Act 2012

Local Nuisance and Litter Control Act 2016

ESCOSA Water Retail Code – Minor and Intermediate Retailers

Australian Standard ISO 10002-2014, 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

Commonwealth Ombudsman’s Better Practice Guide to Complaint Handling 2023

Ombudsman SA Complaint Management Framework

Water Industry Guideline No. 2 (WG2/01)

ESCOSA Water Services Customer Charter

Water Services Customer Contract

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

11. COUNCIL DELEGATION

Any applicable delegations are available on Councils website via the Delegations register via <https://yorke.sa.gov.au/about-us/forms-plans-and-publications/register/>

12. VERSION HISTORY

Version No	Issue Date	Description of Change
1	07/03/2003	Full Revision.
2	08/04/2008	Full Revision.
3	08/06/2010	Full Revision.
4	13/03/2013	Full Revision.
5	11/05/2016	Full Revision.
6	08/03/2017	Legislative Update.
7	13/05/2020	Full Revision.
8	12/06/2024	Full Revision.

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9	14/08/2024	Minor Revision.

ATTACHMENT 1: DEFINITIONS

Term/Reference	Definition
Business Day	A day when the Council is normally open for business (i.e. Monday to Friday 8.30am to 5pm and excludes public holidays.
Complaint	<p>For the purposes of this policy, a complaint is defined as an expression of dissatisfaction with a product or service delivered by the Council or its representatives that has failed to reach the standard stated, implied or expected. This includes grievances about a service that has been, or should have been delivered.</p> <p>It does not mean a request for service (Customer Service Request).</p>
Decision	When a matter, issue or query is actually determined. Actions taken during the process of decision-making (e.g. investigations, requests for further information, internal consideration, referral to an external adviser) are not decisions. Inaction is not a decision.
Decision Maker	The individual or entity responsible for the Decision under review.
Employee(s)	For the purposes of this policy, all persons acting for and/or on behalf of the Council employed directly by the Council in a full time, part-time or casual basis under an employment contract and including volunteers, contractors, agency personnel and work experience placements.
Frivolous	A common law phrase meaning without substance, groundless or fanciful and/or amounts to trifling with the Council or wasting its time.
Reviewer	The individual or entity responsible for resolution of a request for review of a Decision under this policy.
Sufficient Interest	An interest in a Decision over and above the interest of an ordinary member of the community. The general test is whether a person is likely to gain some advantage if successful or suffer some disadvantage in failure, over and above an ordinary member of the community. Sufficient interest requirements apply at common law and can apply under certain legislation.
Vexatious	<p>A common law term that, for the purposes of this policy, includes applications that are:</p> <ul style="list-style-type: none">• so clearly untenable that it cannot possibly succeed (in the sense of achieving a different result to the original Decision) or is foredoomed to fail; or

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Term/Reference	Definition
	<ul style="list-style-type: none">• brought with the intention to annoy, embarrass or harass (even if there is an arguable case); or• will be seriously and unfairly burdensome, prejudicial or damaging to the Council or another person (even if that is not the intention of the Complainant); or• brought for a collateral purpose, and not really for the purpose of having the Council conduct an internal review; or• can really lead to no possible good and so would be an abuse of process; or• raised without reasonable grounds; or• for the predominate purpose of causing, delay or detriment, or achieving another wrongful purpose.