

Policy Document

**INTERNAL REVIEW OF COUNCIL DECISION
POLICY AND PROCEDURE**

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1 Introduction

This policy and procedure specifically addresses the manner in which requests for a review of a previous decision of Council will be dealt with, and provides a fair, consistent and structured process for any party dissatisfied with a decision which has been made by Council or its agents.

Section 270 of the *Local Government Act 1999* requires Council to maintain “policies, practices and procedures” for dealing with requests for service and complaints including a procedure about “the review of decisions of—

- (a) the council;
- (b) employees of the council;
- (c) other persons acting on behalf of the council.”

Council has a three tier process for managing customer complaints, set out below, which includes immediate, informal resolution as well as established processes for review by senior staff.

1. *Immediate response to resolve the complaint*

All staff are empowered to handle complaints in the first instance and it is preferable that they are dealt with promptly at the initial point of contact and at the appropriate officer level.

2. Complaint escalated to a more senior officer

A complaint will be directed to a more senior officer in the Council, where circumstances indicate that the complaint would be more appropriately handled at a higher level. This may occur, for example, where an officer has been involved in the matter that is the subject of the complaint, where the complaint is about an issue that requires a decision to be made at a more senior level, or where a complaint concerns a matter that ranges across more than one Council work area.

3. Internal review of a Council decision by statutory process

Internal review of a Council decision is available under section 270 of the *Local Government Act 1999*. This is a process established by legislation that enables a Council to reconsider all the evidence relied on to make a decision, including new evidence if relevant. This process is generally a last resort in the complaint handling process, but may also be used in situations which are not able to be resolved by other means, such as a complaint about a decision of the CEO.

Council's detailed Complaints Procedure is available to the public.

This policy and procedure for review of a decision commences at the point where:

- A request for the review of a decision is received, or
- A complaint escalates to Tier 3 under Council's complaint handling policy.

The aim of this policy and procedure, which is available on Council's website, is to ensure a fair, consistent and structured process for any party dissatisfied with a decision which has been made by Council or its agents.

The policy and procedure applies to all Council staff who may be involved in receiving an application for review of a Council decision.

1.1 Key Principles

The policy and procedure are based on five principles, which are fundamental in the way Council approaches requests for service, complaint handling and reviews of decisions. They are:

- Fair treatment: which requires impartiality, confidentiality and transparency at all stages of the process
- Accessibility: to be accessible there must be broad public awareness about Council's policies and procedures and a range of contact options
- Responsiveness: this will be achieved by providing sufficient resources, well trained staff and ongoing review and improvement of the systems
- Efficiency: requests and complaints will be resolved as quickly as possible, while ensuring that they are dealt with at a level that reflects their level of complexity
- Integration of different areas of Council where the matter under review overlaps functional responsibilities.

2 Scope

2.1 Application of policy and procedures

This policy and procedure applies when reviewing decisions of Council as outlined below.

Council also has defined procedures for dealing with complaints and requests for service. As a general rule, Council will promote these procedures in the first instance as they offer the potential for immediate resolution. An internal review is the third tier in Council's complaints handling process. It will apply:

- when matters cannot be resolved satisfactorily
- when a decision has to be reviewed by the elected Council (See 6.1 Assignment of application for review)

2.2 Matters outside the scope of the policy and procedures

Other provisions in the *Local Government Act* prescribe appeal arrangements in certain circumstances. For example:

- objections to valuations made by a Council and appeals against orders made pursuant to section 254 of the *Local Government Act*.

Other legislation that has its own prescribed appeal procedures, including:

- the *Development Act 1993*
- the *Dog and Cat Management Act 1995*
- the *Freedom of Information Act 1991*.

While Council prefers to work with its customers to resolve requests for review quickly and effectively, an applicant will always retain the right to seek other forms of resolution, such as contacting the Ombudsman, or taking legal action at any time. Note however that as a general rule, the Ombudsman prefers that matters be addressed by Council in the first instance, unless this is not appropriate in the circumstances. (See Council's *Protocol – Ombudsman Enquiry Procedure*).

2.3 Council's commitment

Council, its committees, staff and contractors make decisions every day which impact on members of the community. It is imperative that these decisions are fair, objective and subject to review.

Council is committed to open, responsive and accountable government. This includes providing processes by which citizens adversely affected by a decision of Council can have their grievances considered.

This policy and procedure will be widely accessible to ensure that customers are fully aware of their right to request the review of a decision and the process that will be followed.

Everyone will be treated equally, in accordance with good administrative practice. Council's procedures are designed to ensure that:

- Every applicant has the 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
- Applicants receive information about the outcome of the review.

3 Interpretation

Alternative Dispute Resolution includes mediation, conciliation or neutral evaluation as set out in section 271 of the *Local Government Act*.

Applicant is 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 means a day when the Council is normally open for business, i.e. Monday to Friday, excluding public holidays.

Council refers to the District Council of Streaky Bay

Decision is a position adopted by Council or its employees. It will generally be a judgement reached after consideration of relevant information.

Decision-maker refers to the individual or entity responsible for the decision under review.

Employee includes a person employed directly by the Council in a full time, part time or casual capacity (whether that position is permanent or contractual) and persons providing services to, or on behalf of, the Council even though they may be employed by another party.

Reviewer refers to the individual or entity responsible for resolution of a request for review of a decision.

4 Records 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*.

All applications must be recorded in Council's records management system in such a way that the information can also be analysed for service improvement opportunities.

5 Procedure

5.1 Making an application

An application for a review of a Council decision provides Council with an opportunity to revisit a decision which has aggrieved an interested party. This may include an individual or a group, ratepayer, resident or business owner. Depending on the particular circumstances, 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 a sufficient interest to apply for an internal review of a decision, on a case-by-case basis.

An application for review must be in writing and set out the reasons for applying for the review (that is, why the applicant believes that the decision is wrong). Although Council can be expected to have information and material relevant to the matter under review, an application for review may also include new, relevant information or evidence to support the application

5.2 Assisting with the application for review

It is essential that no one is excluded from lodging an application for review because of any difficulties they may have representing themselves. All staff are expected to offer assistance where appropriate and provide it on request, including assistance in documenting the reasons for the review in writing when circumstances warrant.

If necessary arrange access to interpreters, aids or advocates to ensure that an applicant is treated equitably.

5.3 Internal Review Contact Officer

An Internal Review Contact Officer (IRCO) appointed by the Chief Executive Officer is the initial point of contact for applicants.

The role of the Internal Review Contact Officer is to:

- explain the procedure to the applicant and explore any alternative options to resolve the matter, such as alternative dispute resolution prior to an application for review.
- acknowledge the receipt of the application
- maintain a register of all applications for review received and the outcomes of the applications
- outline the timeframes involved and the action to be taken in the first instance
- undertake a preliminary investigation to determine what actions have already been taken to try to resolve the matter
- keep the applicant informed of progress

- ensure adequate records are maintained
- report to Council at prescribed intervals on all applications lodged for review

All applications are to be referred to the IRCO immediately, including meeting with the applicant or transferring a telephone call when contact is first made.

5.4 Acknowledging an application for review

The IRCO is responsible for:

- a) working in conjunction with the appropriately delegated officer to determine how the review will be handled
- b) advising the applicant of the process to be undertaken and the time of the next contact
- c) ensuring the application is properly lodged and assigned.

Applications for a review of a decision must be responded to within [10] business days, acknowledging receipt and advising of the expected timeframe for dealing with the matter. Council will use its best endeavours to ensure that a review of the original decision will be completed within [21] business days. However if the decision is to be reviewed by Council, a committee, or an external panel there may be delays caused by meeting cycle timelines. In more complex cases, a review may take longer.

The applicant will be regularly informed of progress, either by email, letter or telephone.

5.5 Applications for a review of the impact of rates or services charges

If Council receives an application for a review of a decision concerning the financial impact of Council rates or services charges, these will be dealt with as a matter of priority. Where circumstances warrant, Council will consider financial relief or the granting of concessions in line with the provisions of the *Local Government Act*.

6 Undertaking a Review

6.1 Assignment of applications for review

The elected Council will be the reviewer:

- when the decision being reviewed was made by the elected Council, a Committee of the Council or the CEO
- when the decision relates to civic and ceremonial matters
- in other circumstances as determined by the CEO or resolution of the Council

Council is also responsible for determining who will undertake the investigation and the preparation of a report for Council consideration. (This may be the CEO, his/her delegate, or an expert party from outside the organisation.)

Where the elected Council is not the reviewer, a review methodology to suit the nature of the internal review to be undertaken will be chosen from the following:

- CEO
- A panel comprised of Council Members and Senior Staff
- A panel of experts external to the organisation
- The assistance of an external person

- Wherever possible and appropriate, Council will seek to involve an external person or panel to assist with the review, including the enlistment of employees of other Councils.

6.2 Role of reviewer

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

- The decision must be within a power properly conferred on the decision-maker under the relevant Act.
- A decision-maker must consider all matters which are relevant to the making of the decision and not take into account matters which are not relevant to the decision.
- A decision-maker must not make a decision or exercise a power or discretion in bad faith or for an improper purpose.
- A decision-maker must ensure that findings of fact are based on evidence.
- Decisions must be reasonable.
- Those who may be affected by a decision must be accorded procedural fairness, which includes the principles of natural justice.
- A decision-maker must properly consider the application of existing policies.
- A decision-maker must not exercise a discretionary power at the direction of another person.

6.3 Review process

In carrying out a review of a decision, 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. The reviewer will 'stand in the shoes' of the original decision-maker and make the best decision available 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.

6.4 Providing 'Procedural Fairness'

Council will observe the principles of procedural fairness (also called 'natural justice') when exercising its statutory powers which could affect the rights and interests of individuals.

Put simply, 'procedural fairness' involves:

- Giving an applicant a right to put their case forward. This will generally involve giving an applicant the opportunity to provide all relevant documentary evidence, rather than an oral hearing
- Ensuring that the reviewer does not have a personal interest in the outcome (is not biased) and
- Acting only on proper evidence that is capable of proving the case.

6.5 Giving Reasons

While there is no statutory requirement to give reasons for a decision, Council will provide reasons for the decision of the reviewer where practicable.

Council will always give reasons to explain the outcome where:

- A decision is not in accordance with published policy;
- A decision is likely to detrimentally affect rights or interests of individuals (or organisations) in a material way; or
- Conditions are attached to any approval, consent, permit, licence or other authorisation.

6.6 Refusing an application for review

A council, or a person assigned to consider the application, 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; or
- it appears that the application is frivolous or vexatious; or
- the applicant does not have a sufficient interest in the matter.

Refusing an application for review will not be done lightly and reasons for the refusal will document the evidence on which a refusal is based.

7 Remedies

Where the review of a decision upholds the applicant's grievance, an appropriate remedy or response will be determined which is consistent and fair for both Council and applicant. The remedy chosen will be proportionate and appropriate to the failure identified.

As a general principle the applicant will, so far as possible, be put in the position he or she would have been in, had the decision not been made. This may mean changing a decision. Where circumstances are such that it is not possible to return to the original situation, or to rectify the outcome of the decision, it may only be possible to offer an apology.

The range of other possible outcomes includes:

- an explanation
- mediation
- an admission of fault

- a change to policy, procedure or practice
- a correction of misleading records
- financial compensation, including a refund of any fees
- the waiving of a debt
- the remission of a penalty
- disciplinary action
- referral of a matter to an external agency for further investigation or prosecution.

The remedy or response may be one, or a combination of these actions. The chosen remedy will be proportionate and appropriate to the failure in service and take account of what the applicant is seeking as an outcome of the review.

If an apology is required it will be done promptly and the applicant advised that appropriate action will be taken to ensure the problem is not repeated.

Compensation will only be offered in cases where the loss or suffering is considered substantial. The Council itself and the CEO are the only people authorised to offer financial compensation and this will only occur after consultation with the Local Government Association Mutual Liability Scheme.

When advising an applicant of the outcome of a review, information will also be provided about alternative remedies, including any rights of appeal and the right to make a complaint to an external agency such as the SA Ombudsman.

8 Reporting

All applications will be recorded in Council's records management system in such a way that the information can also be analysed for service improvement opportunities.

The IRCO records the following information about all applications for review:

- a) the number of applications for review made
- b) the kinds of matters to which the applications relate
- c) the outcome of applications
- d) such other matters as may be prescribed by the regulations.

The IRCO will submit a report to Council annually about section 270 applications for review of a decision, including:

- the number of applications for review made under this section
- the kinds of matters to which the applications relate
- the outcomes of applications under this section.

The IRCO will also provide information on how the outcomes have been used to improve Council's customer service, policies, procedures and practices.

This information, as specified in section 270(8), will be included in Council's Annual Report.