

POLICY DOCUMENT

9.63.2

Policy Name	INTERNAL REVIEW OF COUNCIL DECISIONS
Policy No.	9.63.2
Version:	1
Strategic Reference:	Strategic Focus, effective and accountable decisions, responsive to significant events
Responsible Department:	Corporate & Community
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Next review date:	Council will endeavour to review this policy 4 years after adopted date or following significant change to legislation or where required by relevant public policy considerations.
Applicable Legislation:	Local Government Act, 1999, Section 270
Related Policies:	9.63.26 Complaint Handling 18.63.7 Service & Program Reviews
Related Documents:	18-37-T2 Service Review Assessment

1. PURPOSE

The City of Port Lincoln is committed to transparent decision making and to providing access to a fair, consistent and structured process for any party dissatisfied with a decision that has been made by Council or its agents. This policy addresses the manner in which requests for a review of a previous decision of Council will be dealt with to ensure that:

- a) every applicant has the opportunity to make an application for review of a decision covered by this policy;
- b) an unbiased assessment is undertaken;
- c) decisions are based on sound evidence;
- d) applicants receive information about the outcome of the review.

2. SCOPE

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 policy commences at the point where;

- A request for the review of a decision is received; or
- A complaint cannot be satisfactorily resolved through Council's normal complaint handling processes.

A formal application or request for review of a decision will therefore initiate the procedure process. The person who lodges a formal request for internal review is referred to as the “applicant”.

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

- the Council;
- employees of the Council; and
- other persons acting on behalf of the Council.

2.1. Matters Outside of the Scope

Matters that have prescribed appeal arrangements pursuant to the Local Government Act 1999 or other legislation will not fall into the scope of this policy. Examples include but not limited to:

- Appeals against orders made pursuant to section 254 of the Local Government Act;
- Complaints under Code of Conduct for Council Members ;
- Appeals under the *Planning, Development & Infrastructure Act 2016*;
- Appeals under the *Local Nuisance & Litter Control Act 2016*;
- Appeals under the *Dog and Cat Management Act 1995*; and
- Appeals under 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.

3. KEY PRINCIPLES

This policy is based on the principle that everyone will be treated equally, in accordance with good administrative practice.

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 governance. This includes providing processes by which citizens adversely affected by a decision of Council can have their grievances considered.

The review could lead to the original decision being affirmed, varied or overturned. Sometimes the decision is unable to be changed; in this case Council will undertake an internal review to establish any opportunities for systems or continuous improvement.

This policy will be 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.

4. APPLICATION FOR INTERNAL REVIEW OF A COUNCIL DECISION

4.1. 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 requesting 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.

4.2. 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.

For any complainant who may be unable to make a written submission due to a disability or significant impairment, such as illiteracy, Council will provide alternative options for the complaint to be lodged.

4.3. Internal Review Contact Officer

The Internal Review Contact Officer (IRCO) is the Chief Executive Officer (CEO), or their nominated delegate, and 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; and
- 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.

4.4. *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; and
- c) ensuring the application is properly lodged and assigned.

Applications for a review of a decision must be responded to within ten 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 twenty one 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.

4.5. *Application 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.

5. UNDERTAKING A REVIEW

5.1. *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; and
- 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, their delegate, or an external expert party).

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 external experts; or
- The assistance of an external person.

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

5.2. *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 made was within the properly conferred power of the decision-maker under the relevant Act;
- The decision-maker only considered matters which were relevant to the making of the decision.
- The decision-maker made the decision in good faith and did not exercise power for an improper purpose.
- A decision-maker ensured that findings of fact were based on evidence.
- Decisions were reasonable.
- Those who may be affected by a decision were accorded procedural fairness, including the principles of natural justice.
- A decision-maker properly considered the application of existing policies.
- A decision-maker did not exercise a discretionary power at the direction of another person.

5.3. *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.

5.4. *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.

5.5. 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 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.

5.6. 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.

6. REVIEW OUTCOMES & 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 they 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, or 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. Only the Council itself and the CEO are 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.

7. RECORDS MANAGEMENT & REPORTING

All documents, notes, photographs and correspondence will be retained and stored in accordance with Council's records management protocols as required by Section 125 of the Local Government Act.

Clear and accurate records of interviews and review actions, focussing on factual information will be kept. All records will be safe and secure, and only relevant parties with a genuine interest will have access to the records.

The IRCO will record 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.

If applicable, 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.

8. RELEVANT DELEGATED POWERS AND DUTIES

Any actions or decisions made regarding this policy, will be taken in accordance with Council's current Delegations Register.