



DISTRICT COUNCIL OF
ORROROO/CARRIETON
Southern Flinders Ranges • Established 1997

Internal Review of a Council Decision Policy & Procedure

Version 6.0

Internal Review of Council Decisions Policy and Procedure

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Applicable Legislation:	<i>Local Government Act 1999, s270</i>
Related Policies:	Customer Service Policy Requests for Service Policy Complaints Handling Policy Whistleblowers Policy Fraud & Corruption Policy
Related Procedures:	Complaints Handling Procedure Requests for Service Procedure Protocol – Ombudsman Enquiry Procedure

1 Introduction

Section 270 of the *Local Government Act 1999* (“the Act”) requires the 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.

This Policy and Procedure specifically addresses the manner in which requests for a review of a decision of the District Council of Orroroo Carrieton (“the Council”) (and its employees or agents) will be dealt with, and provides a fair, consistent and structured process for any party dissatisfied with a decision which has been made by the Council.

This Policy and Procedure has been adopted in compliance with section 270 of the Act.

The 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 employees.

1. *Immediate response to resolve the complaint*

All Council employees are empowered to handle complaints in the first instance, and indeed, it is preferable that any such complaints are dealt with promptly at the initial point of contact and at the appropriate officer level.

2. *Complaint escalated to a more senior employee*

A complaint will be directed to a more senior employee 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 employee 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 may have an impact across more than one Council work area.

3. *Internal review of a Council decision by statutory process*

Section 270 of the Act provides for an internal review of a Council decision. This is a statutory process that enables a Council to reconsider all the evidence relied upon to make a decision, an enables the Council to consider new evidence as appropriate. This process is generally to be considered a last resort in the complaint handling process, but may also be appropriate in situations which are not able to be resolved by other means.

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

This Policy and Procedure for review of a decision will operate at the point where:

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

The aim of this Policy and Procedure is to ensure a fair, consistent and structured process for any party dissatisfied with a decision which has been made by Council (or its employees or agents), and is to be applied by all Council employees who may be involved in receiving an application for review of a Council decision.

1.1 **Key Principles**

This Policy and Procedure are based on five principles, fundamental to the manner in which the 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 complexity;
- Integration: of different areas of Council where the matter under review overlaps functional responsibilities.

2 **Scope**

2.1 **Application of Policy and Procedure**

This Policy and Procedure applies when reviewing decisions of the Council, as outlined below.

The Council also has defined procedures for dealing with complaints and requests for service, as set out above.

As a general rule, the 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 and it will apply:

- when matters cannot be resolved satisfactorily; or
- when a decision is required to be reviewed by the elected member body (See 6.1 Assignment of application for review)

2.2 Matters outside the scope of the Policy and Procedure

Alternative review and appeal provisions exist under the Act in certain circumstances, for example, objections to valuations made by the Council and appeals against orders made pursuant to section 254 of the Act.

There are also other appeal and review provisions provided for under other legislation regulated by the Council, including (but not limited to) the:

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

In circumstances, where a more specific appeal or review provision exists, the applicant should follow the process provided for under those provisions in the first instance, rather than the procedure set out under this Policy.

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.

It is however to be noted that, as a general rule, the Ombudsman prefers that matters be addressed by the 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

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

The Council is committed to open, responsive and accountable government. This includes providing processes by which members of the community adversely affected by a decision of Council can have their concerns considered.

This Policy and Procedure is widely accessible to ensure that members of the community are fully aware of their right to request the review of a decision, and the process that will be followed.

All applicants will be treated equally, in accordance with good administrative practices and procedural fairness.

The Council's Procedures is 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; and
- 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 Act.

Applicant is the party lodging the request 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 Orroroo Carrieton.

Decision is a position adopted by Council or its employees. It will generally be a determination reached after considering all relevant information.

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

Employee (and Agent) 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.

Internal Review Contact Officer (IRCO) is appointed by the Chief Executive Officer and is the initial point of contact for applicants. The role of the IRCO is set out at 5.3 below.

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 the Act, and the Council's obligations under the State Records Act 1997.

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.) The 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 hold 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 employees are expected to offer assistance where appropriate, and provide it on request, including assistance in documenting the reasons for the review in writing where circumstances warrant.

If necessary, employees will be required to arrange access to interpreters, aids or advocates to ensure that an applicant is treated equitably in the review process.

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; 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.

5.4 Acknowledging an application for review

The IRCO is responsible for:

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

Applications for a review of a decision must be responded to within ten (10) business days, acknowledging receipt of the application, and advising of the expected timeframe for dealing with the matter.

The Council will use its best endeavours to ensure that a review of the original decision will be completed within twenty one (21) business days. However if the decision is to be reviewed by Council, a Committee, or an external panel, there may be delays. Additionally, in more complex cases, a review may take longer. Where it is anticipated that the review process may take longer than twenty one (21) business days, the applicant will be kept informed about the proposed timeframes.

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

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

If the 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, the Council will consider financial relief or the granting of concessions in line with the provisions of the Act..

6 Undertaking a Review

6.1 Assignment of applications for review to Council

The elected member body of the Council will be responsible for determining who will undertake the investigation and the preparation of a report for the consideration of the Council :

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

Otherwise, the CEO will be responsible for determining who will undertake the investigation and the preparation of a report for the consideration of the Council.

A review methodology to suit the nature of the internal review to be undertaken will be chosen (by either the Council or CEO as set out above) from the following:

- the CEO; or
- a panel comprised of Council members; or
- a panel comprised of Council members and senior employees; or
- a panel comprised of senior employees;
- an independent person or body outside of the Council.

6.2 Role of reviewer

The role of a reviewer is to review the decision subject of the review, to ensure that the decision-maker complied with the following procedural requirements and made a reasonable and supportable decision in the circumstances:

- the decision acted within a power properly conferred on the decision-maker under the relevant Act;
- the decision-maker considered all matters which were relevant to the making of the decision, and did not take into account matters which were not relevant to the decision;
- the decision-maker did not make a decision, or exercise a power or discretion, in bad faith or for an improper purpose;
- the decision-maker ensured that findings of fact were based on evidence;
- The decisions was reasonable in the circumstances;

- those who may have been affected by the proposed decision were accorded procedural fairness;
- the decision-maker properly considered the application of existing Council policies;
- the decision-maker did 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, together with any additional relevant information or material provided by the applicant.

This means the reviewer will do more than simply consider whether the decision was legally and procedurally correct. The reviewer will also consider whether a different decision would be more appropriate, based on the evidence available on review.

6.4 Providing 'Procedural Fairness'

The Council will observe the principles of procedural fairness 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, and giving the applicant the right to make a submission on the proposed determination, before any final determination is made;
- ensuring that the reviewer does not have a personal interest in the outcome (is not biased); and
- acting only on properly obtained evidence

6.5 Giving Reasons

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

The Council will always give reasons to explain the outcome where:

- a decision is not in accordance with a published policy;
- a decision is likely to detrimentally affect the 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 be provided, documenting 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 the Council and the applicant. The remedy chosen will be proportionate and appropriate to the circumstances of the matter.

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 Council 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 available include, but are not necessarily limited to:

- 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 the above actions. The chosen remedy will be proportionate and appropriate to the failure in service and will 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 elected member body of the Council and the CEO are the only persons authorised to offer financial compensation, and such an offer 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 or the Independent Commissioner Against Corruption.

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 will record the following information about all applications for review:

- the number of applications for review made;
- the kinds of matters to which the applications relate;
- the outcome of applications; and
- such other matters as may be prescribed by the regulations.

The IRCO will submit a report to the Council annually regarding 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; and
- 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.

9. Further Information

A copy of this Policy is available for inspection by members of the public at the offices of Council during normal office hours, or from the Council's website. Alternatively, the public may obtain a copy for a fee fixed by Council.

Further enquiries in relation to the policy should be directed to the Chief Executive Officer, or telephone 8658 1260 or by email to council@orreroo.sa.gov.au