

## Internal Review of a Council Decision Policy & Procedure

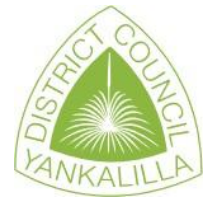
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Relevant Legislation	Local Government Act 1999
Related Policies	Customer Complaints Policy Requests for Service Policy Fraud & Corruption Prevention Policy Public Interest Disclosure Policy
Related Procedures / Documents	Public Interest Disclosure Procedure Complaints Handling Procedure Request for Service Procedure Customer Service Charter

### 1. Objective

The purpose of this policy and procedure document is to provide guidelines for how Council will deal with formal requests for internal reviews of Council decisions (including decisions by its employees and other people acting on behalf of Council).

Council will review certain types of decisions in accordance with this policy and procedure is required by section 270(1) of the Local Government Act 1999 and forms part of Council's processes for dealing with complaints.

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### 2. Scope

An internal review of a Council decision is undertaken when informal complaints processes have been exhausted.

An internal review evaluates the process undertaken by Council in reaching its decision, particularly as to whether the decision made by the Council was:

- a) a reasonable decision to make in the circumstances
- b) a decision open to be made on the facts before the decision-maker; and
- c) a decision made in the public interest.

A review of a decision will also establish if the decision-making process was flawed in any manner.

Council's policy is designed to ensure that:

- d) every person is treated equally and has the opportunity to make an application for review of a decision covered by this procedure
- e) an unbiased review is undertaken
- f) outcomes of a review are based on sound evidence; and
- g) applicants receive information about the outcome of the review.

### 3. Definitions

For the purposes of this policy and procedure:

**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.

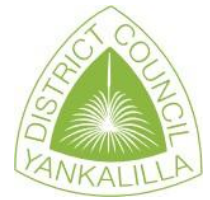
**Decision** – is a position adopted by Council or its employees. It will generally be a judgement reached after consideration of relevant information.

**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.

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**4. Council's commitment**

Council, its committees, staff and contractors make decisions every day which impact on members of the community.

Council is committed to open, responsive and accountable government and to ensuring decisions made are fair, objective and subject to review. This includes providing processes by which citizens adversely affected by a decision of Council can have their grievances considered.

This 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.

**5. Customer Complaints**

Council has a three-tier process for managing customer complaints, set out below:

**5.1. 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.

**5.2. 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.

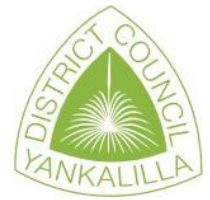
This may occur, for example, where an officer has been involved in the matter that is the subject of the complaint, where the complaint is about an issue that requires a decision to be made at a more senior level, or where a complaint concerns a matter that ranges across more than one Council work area.

**5.3. Internal review of a Council decision**

Internal review of a Council decision will be in accordance with this procedure.

This procedure enables the Council to reconsider all the evidence relied on to make the original decision and new evidence if relevant.

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## 6. Key Principles

The procedure for reviewing decisions is based on the following five principles:

- 6.1. Fair treatment: which requires impartiality, confidentiality and transparency at all stages of the process.
- 6.2. Accessibility: to be accessible there must be broad public awareness about Council's policies and procedures and a range of contact options.
- 6.3. Responsiveness: this will be achieved by providing sufficient resources, well trained staff and ongoing review and improvement of Council's systems
- 6.4. 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.
- 6.5. Integration of different areas of Council where the matter under review overlaps functional responsibilities.

## 7. Decisions Subject to Review

Decisions of the Council, employees of the Council; and other persons acting on behalf of the Council may be subject to a review under this procedure.

The nature of this review is a merits-based review which could lead to the original decision being affirmed, varied or revoked.

Not all actions by Council, Council employees or other person acting on behalf of Council will be a decision.

Actions taken during the process of decision-making (i.e., investigations, requests for further information, internal consideration of the matter or referral of the matter to an external adviser) are not decisions.

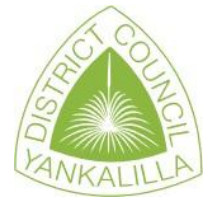
A decision is made when a matter, issue or query is actually determined. Once a matter, issue or query is determined, the decision may be open to review in accordance with this procedure.

Some decisions made by the Council, a Council employee or on behalf of the Council are subject to review or appeal processes set out in legislation. This procedure cannot override or operate inconsistently with these statutory processes.

Where legislation provides for the review of, or appeal from, a type of decision, a decision of that type will not be reviewed under this procedure e.g.

- 7.1. objections to valuations made by the Council;
- 7.2. appeals against orders made pursuant to section 254 of the Local Government Act 1999;
- 7.3. appeals against the issuing of litter abatement notices under the Local Nuisance and Litter Control Act 2016;
- 7.4. appeals against destruction and control orders issued under the Dog and Cat Management Act 1995;
- 7.5. review of an expiation under the Expiation of Offences Act 1996;

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7.6. external review process under the Planning, Development and Infrastructure Act 2016 and the Freedom of Information Act 1991.

Where legislation specifically excludes a type of decision from review either expressly or by necessary implication, this procedure cannot operate inconsistently with that legislation.

A review under this procedure cannot vary or revoke a decision which has operative effect under legislation from the time the decision is made. (For example, some development approvals under the Planning, Development and Infrastructure Act 2016 are intended to have operative effect from the time the decision is made and are not capable of being varied or revoked by Council).

Where legislation specifically provides for an internal review process, that process will apply rather than the process set out in this procedure e.g., internal review of a determination under the Freedom of Information Act or withdrawal of an expiation notice issued by the Council under section 16 of the Expiation of Offences Act

### **8. Who Can Apply for A Review**

A person with a sufficient interest in a decision of the Council, a Council employee or person acting on behalf of the Council, may make a written application for a review of that decision.

An application for a review of a decision must be made within six (6) months of the decision being made (unless a longer period for submitting a particular application is approved by Council).

A person does not have to be the direct subject of a decision to have a sufficient interest in the decision to seek a review under this procedure.

### **9. Internal Review Contact Officer**

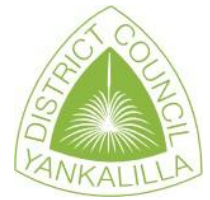
An Internal Review Contact Officer (IRCO) appointed by the Chief Executive Officer is the initial point of contact for all applicants/applications for review of a Council decision.

The role of the Internal Review Contact Officer is to:

- 9.1. 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.
- 9.2. acknowledge the receipt of an application.
- 9.3. maintain a register of all applications for review received and the outcomes of the applications.
- 9.4. outline the timeframes involved and the action to be taken in the first instance.
- 9.5. undertake a preliminary investigation to determine what actions have already been taken to try to resolve the matter.
- 9.6. keep the applicant informed of progress.
- 9.7. ensure adequate records are maintained; and
- 9.8. report to Council at prescribed intervals on all applications lodged for review

All applications are to be referred to the IRCO immediately.

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A person seeking review of a Council decision who attends Council offices personally, or by phone should be referred to the IRCO. The IRCO will explain this procedure.

## **10. Assistance With Applying for A Review**

To ensure equitable access to reviewing a Council decision, assistance will be provided as needed or on request of persons applying for a review of decision.

Assistance may include documenting the reasons for the review in writing on behalf of the applicant when circumstances warrant; access / arrangements for interpreters, aids or advocates; or other assistance as requested.

## **11. Form of Application**

An application for review must be in writing and clearly indicating the reasons for applying for the review (that is, why the applicant believes that the decision is wrong).

An application for review may also include additional relevant information or evidence to support the application.

## **12. Council Response to an Application**

The IRCO is responsible for:

- 12.1. Determining whether or not the decision is subject to review under this procedure.
- 12.2. working in conjunction with the CEO or appropriately delegated officer to determine how the review will be handled.
- 12.3. advising the applicant of the process to be undertaken and the time of the next contact and
- 12.4. 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 endeavour to ensure that a review of the original decision will be completed within [21] business days.

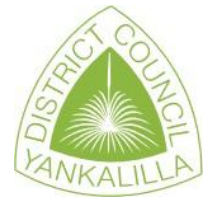
However, where the decision is to be reviewed by Council or an external investigator there may be delays caused by meeting cycle timelines.

In more complex cases, a review may take longer.

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

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### 13. Applications for a Review of the Impact of Rates or Service Charges

If Council receives an application for a review of a decision concerning the financial impact of Council rates or service 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 1999 and rate relief policies.

### 14. Refusing An Application

Council, or a person assigned to consider the application, is entitled to refuse to consider an application for review if:

- 14.1. the application is made by an employee of the Council and relates to an issue concerning their employment; or
- 14.2. it appears that the application is frivolous or vexatious; or
- 14.3. the applicant does not have a sufficient interest in the matter.
- 14.4. the Council, or person assigned to consider the application is satisfied that the subject matter of the application has been or is already the subject of a review by the Council or an investigation, inquiry or review by another authority.

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.

All requests for review relating to matters referred to the Local Government Association Mutual Liability Scheme (LGAMLS) for decision in respect to a claim or potential claim against the Council or in response to a threat of legal action against the Council may be referred to the LGAMLS and not dealt with by Council directly.

### 15. Undertaking A Review

#### Assignment of applications for review

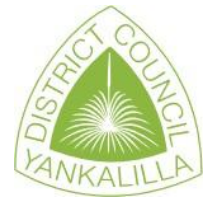
The elected Council will be the reviewer:

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

Where the decision is a decision of the elected Council, the reviewer will be an external person or body who will report the outcome of the review to the Council.

The Council will consider the recommended outcome of the review and determine whether to affirm, vary or revoke the reviewed decision.

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Where the elected Council is not the reviewer, a reviewer will be chosen from the following:

- Chief Executive Officer
- A panel comprised of Senior Staff
- An expert or panel of experts external to the organisation

In determining a reviewer, the level at which the decision was originally made will be taken into account, as will the nature of the decision.

### 16. Role of the Reviewer

The reviewer will undertake a merits review of the decision.

The reviewer will consider all the information and material which were available to the original decision-maker and any additional relevant information or material provided or become available during the course of the review.

The reviewer will 'stand in the shoes' of the original decision-maker and determine if the decision was appropriate on the basis of the relevant circumstances and available information and materials.

### 17. Providing 'Procedural Fairness'

The reviewer will observe the principles of procedural fairness (also called 'natural justice') when undertaking the review.

Put simply, 'procedural fairness' involves:

- Giving an applicant a right to put forward information and materials in support of the application for review.
- ensuring that an applicant is informed of the proposed outcome of the review, and has the opportunity to make submissions to the reviewer on the outcome and have these submissions taken into account; and
- Ensuring that the reviewer does not have a bias or perceived bias or personal interest in respect of undertaking the review.

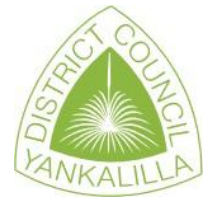
### 18. Providing Reasons

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

- A decision is not in accordance with a Council 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.

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## 19. Outcome Of Review

Where the reviewer is the elected Council, the elected Council will determine whether to affirm, vary or revoke the original decision after considering the recommendation of the external body or Chief Executive Officer.

Where the reviewer is a Council employee, the employee may determine whether to affirm, vary or revoke the original decision if authority to make the decision has been delegated to that employee.

If the reviewer does not have a delegation enabling the making of the decision, then the reviewer should report the outcome of the review to the elected Council or the officer with the necessary delegation for a determination as to whether the decision should be affirmed, varied or revoked.

Where the reviewer is an external person or body then the reviewer should report the outcome of the review to the elected Council for a determination as to whether the decision should be affirmed, varied or revoked. An external reviewer cannot vary or revoke a decision made by or on behalf of Council.

## 20. Records Management

All documents and information must be retained and stored in accordance with Council's Records Management protocols as required by Section 125 of the Local Government Act 1999.

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.

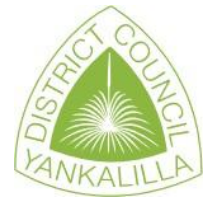
A report will be submitted to Council annually about section 270 applications for review of a decision, including:

- 20.1. the number of applications for review made under this procedure
- 20.2. the types of matters to which the applications relate;
- 20.3. the outcome of applications under this procedure; and
- 20.4. any other matters as may be prescribed by the regulations

The IRCO will report 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.

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## 21. Availability

This Policy is available for inspection at the Council office listed below during ordinary business hours and provided to interested parties as per Council's Fees and Charges Register. Copies are available to be downloaded, free of charge, from Council's website: [www.yankalilla.sa.gov.au](http://www.yankalilla.sa.gov.au)

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Office hours: Monday to Friday, 9.00am to 5.00pm (except public holidays)

## 22. Grievances

Any grievances in relation to the policy and procedure or its application should be forwarded in writing addressed to the Chief Executive Officer of Council.

## 23. Review Cycle

This document is subject to review in four (4) years from the date of authorisation or more frequently should legislation or Council require it.

## 23. Document History

Date	Version	Council Resolution No.	Description of changes
August 2012	1.0	NA	Adoption of Policy
December 2012	2.0	NA	Review of Policy
February 2015		NA	Review of Policy
August 2017	3.0	C17129	Review of Policy
October 2019	4.0	C19195	Review of Policy
December 2023	5.0	C23255	Review of Policy. Significant amendments and re-wording made.

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