

	<h1>District Council of Cleve</h1>	Version No:	5
		Issued:	March 2017
		Next Review:	March 2019

Policy Name: **Internal Review of Council Decisions Policy**

Purpose

The purpose of this policy is to provide guidelines for how Council will deal with the formal requests for a review of decisions of Council, its employees and other people acting on behalf of Council.

The District Council of Cleve recognises the importance of transparency in Council decision-making and the need to provide a fair, objective and consistent process for the review of Council decisions.

This policy meets Council's legislative requirements under the Local Government Act 1999 Section 270, where it specifies;

"A Council must develop and maintain policies, practices and procedures for dealing with –

- a) Any reasonable request for the provision of a service by the Council or for the improvement of a service provided by the Council, and
- b) Complaints about the actions of the Council, employees of the Council, or other persons acting on behalf of the Council"

Legislative Framework

This policy has been developed in accordance with the Local Government Act 1999 (Section 270) which provides that the policy must address at least the following matters:

- the manner in which an application for review may be made;
- the assignment of a suitable person to reconsider a decision under review;
- the matters that must be referred to the Council itself for consideration or further consideration;
- in the case of applications that relate to the impact that any declaration of rates or service charges may have had on ratepayers – the provision to be made to ensure that these applications can be dealt with promptly and, if appropriate, addressed through the provision of relief or concessions under this Act;
- the notification of the progress and outcome of an application for review;
- the time frames within which notifications will be made and procedures on review will be completed.

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Pursuant to Section 270(7) of the Act, a formal request for review does not prevent a complaint being made to the Ombudsman at any time.

Complaints relating to Competitive Neutrality Pricing are also managed by this policy.

Policy

Definition: "Decision of Council" means a formal decision of Council, a decision of an employee of Council made under delegation or decisions of other people acting on behalf of Council.

The District Council of Cleve will attempt to resolve all complaints about Council decisions without the need for formal requests for review of those decisions to be lodged. However, this may not always be possible. The Internal Review procedure will only apply in those instances where a formal request for review of a Council decision is made.

A person who lodges a request for review of a decision is called "the Applicant".

This Policy will apply to those decisions made by:

- the Council
- employees of the Council
- other persons acting on behalf of the Council, which have resulted or will result in an administrative act of the Council.

The following principles of this policy may not apply when an alternative statutory process for review exists in other legislation, for example a request for review pursuant to the Freedom of Information Act. However, applications relating to matters that fall outside statutory appeal procedures will be considered for a review on the merits of the individual application. It does not and is not intended to exclude other rights, and remedies available at law.

The following principles will apply to any request for a review of a decision:

- 1) Requests for review of a decision may be lodged by any person with a sufficient interest in a decision of the Council, or a decision of an employee of the Council or a decision of any other persons acting on behalf of the Council in the course of their duties.
- 2) The Council or the person assigned to consider a formal application for review may, pursuant to Section 270 (4) of the Act refuse to consider such an application if:
 - i. the application is made by an employee of the Council and relates to an issue concerning his or her employment; or
 - ii. it appears that the application is frivolous or vexatious; or

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- iii. the applicant does not have a sufficient interest in the matter.
- 3) In general, Council will only consider a request for a review of a decision that has been made in the 6 month period immediately prior to the date the request is received. Further consideration may be given to review a decision made outside of this period in extreme circumstances.
 - 4) A formal request for a review of a decision must:
 - i. be in writing; and
 - ii. be addressed to the Chief Executive Officer (CEO) of the Council; and
 - iii. provide full details of the decision for which the applicant is seeking a review.
 - 5) There is no fee payable for an application for review of a decision.
 - 6) Where necessary, assistance will be provided to applicants to lodge a formal request for review.
 - 7) Council will keep confidential the details of any application for review in so far as that is practicable. When no longer practicable, the applicant will be so advised.

The following principles will be followed in responding to a request for an Internal Review of a decision:

- 1) The CEO will formally acknowledge in writing all requests for a review of a decision within 5 working days of receiving the request.
- 2) The CEO will advise the Applicant of the expected timeframe within which a determination will be made in respect of their request for review. In most cases requests for review will be considered and determined within 28 days. However, in some circumstances the review process may take longer.
- 3) Principles of natural justice will be observed in dealing with formal requests for review of a decision.
- 4) All parties will have the opportunity of making written submissions expressing their point of view and responding to issues raised, including the provision of any relevant information.
- 5) The CEO shall be responsible for coordinating any requests for review of a decision.

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- 6) The CEO will assess and determine all requests for review of a decision (except those grievances which will be referred directly to the Council) and decide what action, if any, should be taken including whether an independent investigation is necessary. The CEO may elect to appoint another officer or external person to assist in the review process.

- 7) The CEO will be responsible for determining whether a request for review of a decision is frivolous or vexatious and/or whether the Applicant does have sufficient interest in the matter. In those instances when the Council is to consider or reconsider a matter itself, the CEO may make a recommendation to the Council that a request for review is frivolous or vexatious or that the Applicant does not have a sufficient interest in the matter.

- 8) The Council itself will deal with some requests for review. The types of requests for review of a decision which will be referred to the Council by the CEO for consideration or reconsideration are those regarding:-
 - a. decisions made by the Council or Committee by formal resolutions;
 - b. civic and ceremonial matters;
 - c. issues that in the opinion of the CEO are likely to be of interest to the wider community;
 - d. a recommendation by the CEO that the Council should not consider a request for review which falls within any of the above grounds because the application is frivolous or vexatious or that the Applicant does not have a sufficient interest in the matter;
 - e. any other matters at the discretion of the CEO.

- 9) Where it is considered that an independent investigation is appropriate or necessary, the matter will be referred to the Internal Review of Council Decisions Committee of the Eyre Peninsula Local Government Association for consideration.

- 10) Reasons for the decision made on any reconsideration will be available to the applicant on request.

- 11) Where a determination is made that the original decision under review is upheld, the Applicants will be notified in writing of other options for review.

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Applications under this policy relating to Rates

In responding to any application relating to the impact that any declaration of rates or service charges may have had on ratepayers Council is aware of its obligations under Section 270 (2) (ca) of the Act. Accordingly as part of the internal review process in these instances, Council or the CEO (as part of the review process) will consider the provisions available to ratepayers for rate relief or concessions as set out in the Local Government Act 1999. Council can also offer alternate payment arrangements in its endeavors to assist ratepayers to meet their rate debt liability.

It is noted that Council is not in a position to review its decision relating to the declaration of rates but can offer the above as a means of assisting ratepayers in managing their rate debt.

Guidelines for Elected Members Requesting a Review

Where an individual Elected Member wishes a decision of a Council Officer to be reviewed the following steps are to be followed:

1. In the first instance, the Elected Member should raise any concerns with the Manager Corporate Services. Note: if the CEO is to undertake the Internal Review he can not be involved in this part of the process .
2. The Manager of Corporate Services will investigate the concerns raised and advise the Elected Member.
3. In the event that the Elected Member is not satisfied with the decision of the staff involved, the steps of Council's "Internal Review of Council Decisions Policy" as outlined in this document should be followed. Upon receipt of the written letter from the Elected Member the CEO will notify the Mayor for information only. Note: In accordance with the Local Government Act 1999, Elected Members acting individually do not have the authority to instruct staff on the decision to be made; this can only be achieved by a resolution of Council or the relevant Committee of Council.
4. The CEO shall advise the Elected Member and Council of the decision including the reasoning. If the Elected Member is still not satisfied with the decision on the matter, then the Elected Member may raise the matter in Council or the relevant Committee of Council through a notice of motion which may be supported by a report from the Elected Member.

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Alternative Options

Where all options for investigating the complaint have been followed and the complainant is still dissatisfied then they may choose to refer the matter to the Ombudsman. Matters regarding Competitive Neutrality Pricing can also be referred to the Australian Competition and Consumer Commission (ACCC). The ACCC is a Statutory Authority appointed under the Government Business Enterprise Act.

Reporting on Reviews

In accordance with Section 8 of the Act Council will provide a report in each annual report on the Requests for Review under this policy which is to include:

- The number of applications received in the relevant financial year,
- The kinds of matters to which the applications relate,
- The outcome of the applications, and
- Any other matter prescribed by Regulations.

Availability

This policy is available for inspection on Councils website at www.cleve.sa.gov.au and at the Council office during ordinary hours of business at no charge.