

City of Albany

**Policy & Procedure**

# **Internal Review**

(Decision or conditions relating to a decision)

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## CONTENTS

Objective.....	4
Policy Statements .....	4
Principles .....	4
Scope .....	5
Review Position & Date.....	5
Associated Documents .....	5
PROCEDURES.....	6
A. OBJECTION TO RATE RECORDS.....	6
B. OBJECTION TO VALUATION ON RATES NOTICE.....	6
C. ENROLMENT ON THE COUNCIL'S ELECTORAL ROLL.....	7
D. PLANNING APPLICATION DETERMINATIONS .....	7
E. OTHER DECISIONS MADE PURSUANT TO THE LG ACT .....	8
Advice of objection and review rights: .....	8
Objection may be lodged: .....	8
Dealing with objection: .....	8
F. REVIEW.....	9
G. STATE ADMINISTRATIVE TRIBUNAL (SAT).....	9
H. SUSPENSION OF EFFECT OF DECISION.....	9
I. THIRD PARTY APPEAL RIGHTS .....	10
J. INFRINGEMENTS ISSUED BY COUNCIL OFFICERS .....	10
K. COMMUNICATING ADVICE OF A DECISION .....	10
L. FURTHER INFORMATION & READING .....	11
ATTACHMENT 1: PROCESS FLOW CHART .....	12
ATTACHMENT 2: FORM 4 .....	13

## Objective

The following information seeks to explain the general rights of individuals to seek a review of a Council or an Officer's decision or conditions relating to a decision.

## Policy Statements

The City of Albany is committed to provide peace of mind to our customers through a transparent, independent and robust internal review process.

Internal review is a mechanism for individuals who are concerned that a decision was not made correctly, to have the decision reviewed and their concerns addressed by an independent review officer.

### Principles

An internal review is a "merits review", meaning the internal review officer will make their decision based on the material which was available to the original decision maker as well as any new, relevant information that becomes available during the review.

The City of Albany seeks to incorporate the following principles when dealing with reviews under this policy:

#### **Courtesy - The internal review officer will:**

- Be courteous and helpful
- Show patience, reliability and trustworthiness
- Display integrity, trust and respect

#### **Professional Skills & Knowledge - The internal review officer will:**

- Listen and understand issues
- Conduct internal reviews in an accurate and rigorous manner
- Respect confidentiality where appropriate
- Meet ethical obligations

#### **Responsiveness - The customer will be:**

- Informed of timeframes for action
- Provided with the name and contact details of the internal review officer
- Kept informed of the progress of their internal review application
- Relied upon to provide all relevant information if required by the internal review officer to make a new decision

#### **Monitoring, review and continuous improvement - The City will:**

- Record, monitor, analyse and report internal review outcomes
- Identify necessary improvements and training opportunities
- Implement organisational change and better decision-making

### **Accountability:**

An internal review will be undertaken by a person who was not involved in making the original decision and who is of an equal or more senior level to the person who made the original decision.

Internal review officers must be consistent in their approach. They follow best practice in decision making to ensure their decision accurately reflects the law and the facts are established based on evidence. All decisions must provide for natural justice to all affected parties.

Internal review officers must act independently and exercise their own judgment while having regard to the legislation, the Council's policies and procedures and, where relevant, accepted technical standards. They must provide written reasons for their decisions within legislated timeframes and service delivery standards.

### **Internal Review Officer:**

The internal review officer may investigate a matter and make a new decision which may:

- Be the same as the original decision (uphold); or
- Vary from the original decision (varied); or
- Completely differ from the original decision (overturned).

Internal review decisions may still be reviewable externally by the State Administrative Tribunal (SAT).

### **Declining to investigate:**

Where the applicant has not provided sufficient information and/or reasons for the review request or it would be otherwise unreasonable to re-investigate a matter or matters, the City and/or Council may decide to uphold the original decision without further investigation.

### **Scope**

Applications are assessed to determine whether they may be subject to an internal review under this policy.

Only those decisions which are detailed in this policy are subject to internal review.

### **Review Position & Date**

This policy and procedure is to be reviewed by the document owner annually.

### **Associated Documents**

- *Local Government Act 1995*
- *Local Government (Functions and General) Regulations 1996, Schedule 1 (Form 4)*

## PROCEDURES

### A. OBJECTION TO RATE RECORDS

**(Section 6.76 to 6.82 of the *Local Government Act 1995*)**

A person may, in accordance with this section, object to the rate record of a local government on the ground that there is an error in the rate record:

- with respect to the identity of the owner or occupier of any land; or
- on the basis that the land or part of the land is not rateable land; or
- if the local government imposes a differential general rate, that the characteristics of the land recorded in the rate record as the basis for imposing that rate should be deleted and other characteristics substituted.

The objection is to be made to the local government in writing within 42 days of the service of a rate notice and must identify the relevant land; and set out fully and in detail the grounds of objection.

#### **Review of decision of local government on objection:**

Any person who is dissatisfied with the decision of a local government on an objection by that person under section 6.76 may, within 42 days (or such further period as the State Administrative Tribunal, for reasonable cause shown by the person, allows) after service of notice of the decision, apply to the State Administrative Tribunal for a review of the decision.

### B. OBJECTION TO VALUATION ON RATES NOTICE

**(Section 32 of the *Valuation of Land Act 1978*)**

Any person liable to pay any rate or tax assessed in respect of land who is dissatisfied with a valuation of such land may serve upon the Valuer-General or any rating or taxing authority (Council) a written objection to the valuation within 60 days after the issue of such an assessment.

An objection to a valuation of land shall:

- describe the relevant land so as to identify it;
- identify the valuation objected to; and
- set out fully and in detail the grounds of objection and the reasons in support of those grounds of objection.

Further information can be sourced from the state government agency which issues valuations:  
<http://www.landgate.wa.gov.au/corporate.nsf/web/objections>

## C. ENROLMENT ON THE COUNCIL'S ELECTORAL ROLL

**(Section 4.32 to 4.35 of the *Local Government Act 1995*)**

A person who is aggrieved by a decision of the CEO of the Council to deny enrolment on the Council's 'Owners and Occupiers' Electoral Roll pursuant to Section 4.30 of the LG Act is entitled to appeal that decision to the Electoral Commissioner of WA in accordance with s4.32 of the LG Act and associated regulations. Advice of how an aggrieved person can make this appeal will be included on the advice of rejection of enrolment application.

## D. PLANNING APPLICATION DETERMINATIONS

**(Part 14 of the *Planning & Development Act 2005*)**

When an employee of the local government (the Council) has determined a planning application (approval with conditions or refusal) under delegated authority from the Council and the applicant/owner is aggrieved by any part of the determination, the applicant/owner has two options:

- **Option 1:** Apply to the City for a 'Request for Reconsideration of a Determined Application' within 28 days from the date of the determination. Such request for reconsideration should be lodged in writing with the Development Services Team, with the appropriate fees (NB: different fees apply if the matter is to be reconsidered by Planning Services or Council as per Council's operative Fees & Charges Schedule) and the provision of additional information and/or justification as to why the determined application should be reconsidered.
- **Option 2:** Apply to the State Administrative Tribunal (SAT) for a right of review in accordance with Part 14 of the Planning and Development Act 2005. An application for review must be lodged within 28 days from the date of determination.

*Note: If an applicant/owner lodges a 'Request for Reconsideration of a Determined Application' with the City, this does not remove their right to apply for a review by the SAT.*

When the Council has determined a planning application (approval with conditions or refusal) and the applicant/owner is aggrieved by any part of the determination, the applicant/owner has the option to apply to the SAT for a right of review in accordance with Part 14 of the *Planning and Development Act 2005*. An application for review must be lodged within 28 days from the date of determination.

For further information can be sourced from the state government agency that administers SAT:  
<http://www.sat.justice.wa.gov.au>

Notes:

1. *Appeal rights relating to decisions made by the Great Southern Joint Development Assessment Panel are dealt with by the Panel and not the City of Albany.*
2. *The Review Officer cannot overturn a decision on a Planning / Development Application (DA) matter once it has been made unless:*
  - *The reconsideration was requested by the proponent; and*
  - *The planning matter is being reviewed by a qualified planner with the appropriate Council delegation.*

## E. OTHER DECISIONS MADE PURSUANT TO THE LG ACT

### (Section 9.1 to 9.9 of the *Local Government Act 1995*, incl. Various Local Laws)

When a local government (the Council), or one of its employees acting on behalf of the Council, makes a decision under the LG Act as to whether it will:

- grant a person an authorisation (approval, permit or license) or under any local law or regulation that is to operate as if it were a local law; or
- renew, vary, or cancel an authorisation that a person has under any of those provisions;

the Officer must give the applicant (affected person) notice of their Objection (to Council) or Review (to the State Administrative Tribunal (SAT)) rights with the notice of the decision.

This also applies whenever a local government gives a person a notice under s 3.25 of the LG Act (Notice to owner or occupier of land). The giving of a notice under that section is to be regarded as the making of a decision.

The **Objection and Review Rights** also applies whenever a local law, or regulation that is to operate as if it were a local law, states that a decision under it is one to which the Division (Part 9 of the LG Act) applies and that a person specified in it is an affected person.

#### Advice of objection and review rights:

Whenever a decision is made that the affected person could consider to be unfavourable, the person making it is to ensure that, as soon as practicable after the decision is made, the affected person is to be given written reasons for the decision and informed of the person's rights to object and apply for a review of the decision (preferably at the same time as informing the person of the outcome of a decision or determination).

#### Objection may be lodged:

An affected person may object to a decision (to Council) if the person has not applied for a review of the decision (to SAT).

The objection is made by preparing it in accordance with Section 33 of the *Local Government (Functions and General) Regulations 1996* and [Form 4](#) (of those regulations) and lodging it with the local government, by giving a copy to the CEO, within 28 days after the right of objection arose [i.e. within 28 days after the decision], or within such further time as the local government may allow.

#### Dealing with objection:

The objection is to be dealt with by the Council of the local government or by a committee authorised by the Council to deal with it. A committee cannot deal with an objection against a decision that it made or a decision that the Council made. The person who made the objection is to be given a reasonable opportunity to make submissions on how to dispose of the objection.

The objection may be disposed of by:

- dismissing the objection;
- varying the decision objected to; or
- revoking the decision objected to, with or without:
  - substituting it for another decision; or
  - referring the matter, with or without directions, for another decision by a committee or person whose function it is to make such a decision.

The local government is to ensure that the person who made the objection is given notice in writing of how it has been decided to dispose of the objection and the reasons for disposing of it in that way.

## **F. REVIEW**

An affected person may apply to the SAT for a review of a decision if the person:

- has not lodged an objection to the decision; or
- has lodged an objection but at the expiration of 35 days after it was lodged, has not been given notice in writing of how it has been decided to dispose of the objection.

If the person lodged an objection and has been given a notice in writing of how it has been decided to dispose of the objection, the person may apply to the SAT for a review of the decision on the objection.

The application is to be made within 42 days after the right to make it, i.e.:

- within 42 days after the original decision, where the applicant has not lodged an objection to the decision,
- more than 35 days, but within 77 days, after the objection was lodged and that notice has not been given in writing by the local government of how it has been decided to dispose of the objection; or
- within 42 days after the objection was decided where the local government has advised in writing of how it has been decided to dispose of the objection.

## **G. STATE ADMINISTRATIVE TRIBUNAL (SAT)**

The SAT is a single tribunal created to deal with administrative appeals that were previously decided by a large number of ministers, courts and specialist tribunals and boards. Many rights of appeal to tribunals, ministers, referees and courts under legislation administered by local governments have been repealed and replaced by the right of review to SAT.

For further information visit the website of the State Government Agency that administers SAT at <http://www.sat.justice.wa.gov.au>

## **H. SUSPENSION OF EFFECT OF DECISION**

If an objection has been lodged against a decision or an application has been made for a review of the decision, the effect of the decision is suspended until the person or tribunal authorised to deal with the objection or application has decided how to dispose of it unless

- the person or tribunal orders that the suspension be revoked; or
- the local government (council or committee) revokes the suspension because it considers that there are urgent reasons why the effect of the decision should not be suspended or that suspension of the effect of the decision is reasonably likely to endanger the safety of any person, cause damage to property, or to create a serious public nuisance.

As soon as a local government revokes a suspension, it is to give the affected person notice in writing stating its reasons.

## **I. THIRD PARTY APPEAL RIGHTS**

The City of Albany (Council) does not support and nor, generally, is it provided for by prevailing State legislation, of the giving of what is called ‘third party’ appeal rights to persons. Third Party appeal rights are what can best be described as “giving the right of review, objection or appeal, to a person other than the applicant who is aggrieved”.

An example of a third party whom might like to appeal, object or seek review of a decision issued by the Council or by Council officers under delegation, would be a neighbour aggrieved by an approval on land adjoining them.

Obviously neighbours and other persons (not being the applicant) can be impacted negatively or perceive that there will be a negative impact on their amenity by a Council decision, particularly in matters involving land use planning. Council attempts to minimise the potential for this impact by consulting as widely as possible and ensure that developments likely to cause impact on neighbours are advertised to those that might be negatively impacted. It then assesses the various submissions received but ultimately does have to make decisions that may have impacts on others. As a neighbour or adjoining landowner or occupier, there is no avenue to appeal in this instance (no third party appeal right).

## **J. INFRINGEMENTS ISSUED BY COUNCIL OFFICERS**

Where an Authorised Person (Officer) has issued a person with an Infringement Notice, the appeal or review rights (if any) will be detailed on the Infringement Notice and/or an accompanying letter. Generally there are no appeal rights to an infringement other than having the matter determined by a court.

If a person genuinely believes that there are grounds as to why the Infringement should be withdrawn then they are encouraged to detail those reasons in writing to the CEO of the City of Albany seeking a review of the matter.

Note: Specific legislation prescribes specific review process (i.e. Cat Act).

## **K. COMMUNICATING ADVICE OF A DECISION**

The information about objection, appeal or review rights contained in this document should not be seen as exhaustive. There may well be other rights of Review, Objection or Appeal (of a Council decision) that you are entitled to and Council encourages you to ask the relevant Council Officer who advised you of the decision, about your rights relating to a particular decision that you may be aggrieved by.

**In giving advice of a refusal, approval or authorisation (including a license or permit) with or without conditions, City of Albany’s Service Commitment is that officers will, in all instances, provide the details of how, to whom and by when, an Appeal, Objection or Review of the decision can be made, if such right exists either at law or council policy position.**

## L. FURTHER INFORMATION & READING

Please note that the above information should not be seen as definitive or the only appeal or objection rights that a person may have under a given law. Almost every decision under almost every law has options for review, objection and or appeal.

For additional reading please refer to the *Local Government Act 1995*, Sections 9.1 to 9.9 inclusive.

Less frequent examples whereby appeal or review rights exist but which are not dealt with here and are covered by relevant laws and / or plans include;

- The *Local Government (Uniform Local Provisions) Regulations 1996*, regulations 13 to 16 (Crossovers)
- The *Freedom of Information (FOI) Act 1992* and the City of Albany FOI Statement
- The *Public Interest Disclosure (PID) Act 2003* and the City of Albany PID Disclosure Statement & Procedures
- The *Local Government Rules of Conduct Regulations 2007*

For further information about a person's right to complain about a process that led to a decision can be sourced from:

- Western Australian Government Complaint website, [www.complaints.wa.gov.au](http://www.complaints.wa.gov.au) ;or
- The Office Parliamentary Commissioner (Ombudsman) at [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au) .

## ATTACHMENT 1: PROCESS FLOW CHART

Process Step	Who	Required Outcome	Evidence
1. Received, logged & allocated	Delegated Receiving Officer	Request for review documented and entered into the City's " <b>Synergy Central Records</b> " and referenced to the relevant ED.	<b>Email, Letter or Form 4</b>
2. Investigated & actioned	Nominated Executive Director(s)	Acknowledgement Letter sent to complainant as quickly as possible and always within 10 working days including a reference number and expected timeline for the review.	<b>Acknowledgement Letter and supporting Synergy records</b>
3. Assessed	Executive Management Team (EMT)	Internal Review Officer assigned to review decision and evidence. Investigation Report prepared for appropriate body to review (i.e. Council, Committee with Delegated Authority and/or CEO). Advise applicant of appropriate time frame, if required to be referred to Council and/or Council Committee.  *Internal Review Report CONFIDENTIAL	<b>Investigation report prepared and supporting Synergy records</b>
4. Closed	Relevant EMT member	Letter detailing decision to Customer summarising the outcome of the review. Ensure letter details any further review rights if applicable.	<b>Review Decision Letter</b>
5. Reported	Executive Director Corporate Services	Summary of the resulting actions presented to Executive Management Team (EMT).	<b>Committee Meeting Minutes</b>
6. Improved	Manager Governance & Risk	Feedback from EMT and review trends used to consider opportunities for process improvement with relevant team (if required).	<b>Working Group Minutes</b>

Form 4

[reg. 33(1)]

Local Government Act 1995
Local Government (Functions and General) Regulations 1996

OBJECTION UNDER SECTION 9.5 OF THE ACT

To the (1) .....

I, (2) .....

of (3) .....

hereby object to the (4) .....

to (5) .....

The grounds of my objection are as follows:

(6) .....

In support of my objection I attach the following:

(7) .....

Dated the ..... day of ..... 20.....

(8) .....

Person objecting

- (1) name of local government
(2) full name of person objecting
(3) postal address of person objecting
(4) identify decision to which objection is made
(5) give details of decision
(6) give details of grounds of objection
(7) plans, specifications, letters, notices, or other documents (if appropriate)
(8) signature of person objecting