

2.19 Internal Review Policy

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| Policy Owner | Executive Director Corporate & Commercial Services |
| Responsible Officer | Manager Governance & Risk |
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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.

Scope

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

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

Policy Statement

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 practices 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 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 Administration 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.

Review Position and Date

This policy and procedure are to be reviewed annually.

Associated Documents

Local Government Act 1995

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

2.19 Internal Review Procedure

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, 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 the 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.

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>

Enrolment on the Council's Electoral Roll

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

If a person is aggrieved by the CEO of the Council's decision to deny enrolment on the Council's 'Owners and Occupiers' Electoral Roll (under Section 4.30 of the LG Act), they are entitled to appeal this decision.

The appeal can be made to the Electoral Commissioner of WA in accordance with Section 4.32 of the LG Act and associated regulations. Information on how to make this appeal will be included with the notice of rejection of the enrolment application.

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:

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.

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.*

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 regarding:

- Authorising a person (approval, permit, or license) under any local law or regulation that operates as if it were a local law; or
- Renewing, varying, or cancelling an authorization that a person has under any of those provisions;

The officer must provide the applicant (affected person) with notice of their rights to object (to the Council) or review (to the State Administrative Tribunal (SAT)) along with the notice of the decision.

This also applies whenever a local government issues a notice under section 3.25 of the LG Act (Notice to owner or occupier of land). Issuing a notice under this section is considered a decision.

The objection and review rights also apply whenever a local law or regulation that operates as if it were a local law states that a decision under it is subject to Part 9 of the LG Act, and specifies that a person is an affected person.

Advice of objection and review rights:

Whenever a decision is made that could be considered unfavourable to an affected person, the decision-maker must ensure that the affected person is:

- Given written reasons for the decision as soon as practicable after it is made.
- Informed of their rights to object and apply for a review of the decision.

Ideally, this information should be provided at the same time as informing the person of the decision's outcome.

Objection may be lodged:

An affected person may object to a decision by the Council if they have not applied for a review of the decision by the State Administrative Tribunal (SAT).

To do this, the person must follow section 33 of the Local Government (Functions and General) Regulations 1996 and use Form 4 from those regulations. The objection must be lodged 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). The local government may allow additional time for lodging the objection.

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.

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.

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>

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.

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 who 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.

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 ensuring that developments likely to cause an 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).

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 a specific review process (i.e. Cat Act).

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 the 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.

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

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 ;or
- The Office of Parliamentary Commissioner (Ombudsman) at www.ombudsman.wa.gov.au .

Attachment 1: Process Flow Chart

| Process Step | Who | Required Outcome | Evidence |
|---|---------------------------------------|---|---|
| Received, logged & allocated | Delegated Receiving Officer | Request for review documented and entered into the City's Records System and referenced to the relevant ED or Designated Officer. | Email, Letter or Form 4 |
| 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. | Acknowledgement Letter and supporting Synergy records |
| Assessed | Executive Management Team (EMT) | <ul style="list-style-type: none"> _ Internal Review Officer assigned to review decisions and evidence. _ Investigation Report prepared for appropriate body to review (i.e. Council, Committee with Delegated Authority and/or CEO). _ Advise the applicant of the appropriate time frame, if required to be referred to the Council and/or Council Committee. <p style="text-align: center;"><i>*Internal Review Report CONFIDENTIAL</i></p> | Investigation report prepared and supporting Synergy records |
| Closed | Relevant EMT member | <ul style="list-style-type: none"> _ Correspondence (email/letter) detailing the decision to the Customer summarising the outcome of the review. _ Ensure correspondence details any further review rights if applicable. | Review Decision Letter |
| Reported | Executive Director Corporate Services | Summary of the resulting actions presented to the Executive Management Team (EMT). | Committee Meeting Minutes |
| Improved | Manager Governance & Risk | Feedback from EMT and review trends used to consider opportunities for process | Working Group Minutes |

Attachment 2: Form 4 – Objection Under Section 9.50 of the Act

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*