

ADMINISTRATIVE ACTION AND COMPETITIVE NEUTRALITY COMPLAINTS MANAGEMENT (CM03.14CP.01)

OBJECTIVES

The objectives of this guideline are:

1. For Council to adopt a process for resolving administrative action complaints, as required by section 268 *Local Government Act 2009*; and
2. For Council to adopt a process for resolving competitive neutrality complaints, as required by section 48 *Local Government Act 2009*.

SCOPE

This guideline applies to the management of administrative action and competitive neutrality complaints. Matters relating to other forms of complaints, including action requests are managed according to their associated complaint management processes.

GUIDELINE RESPONSIBILITIES

Organisational Commitment

Council will endeavour to provide services and to conduct its operations in accordance with community expectations, but acknowledges the right of persons to provide feedback, both positive and negative, on its services and/or to lodge a complaint about any decision, action or inaction by the Council or a Council officer.

In support of its Corporate Values and the Local Government Principles, Council:

- is committed to managing complaints in a responsive, efficient, effective, fair and economical way;
- acknowledges the right of the public and its staff to complain when dissatisfied with a service, and encourages feedback from customers, clients, staff and the public generally;
- expects staff to be 'complaints friendly' and not defensive or negative about feedback and complaints; and
- recognises that properly handled and analysed complaints and feedback help Council to improve its business processes. (Time spent on good management of complaints is therefore an investment in better service to the public.);
- accepts that there is significant public interest in Council responding appropriately to complaints about its decisions and actions. (As a public agency, Council is expected to act

fairly and reasonably in making decisions that affect individuals or the community, as well as being accountable for its decisions.)

Council will strive to ensure that:

- its Complaints Processes enable anyone affected by and dissatisfied with a decision, action or inaction of the Council or a Council officer to easily and simply lodge a complaint;
- persons wishing to lodge a complaint are provided with information on the Complaints Process and, if necessary, assistance to make their complaint;
- complaints are accepted in a professional and respectful manner and valid feedback is welcomed;
- each complaint is assessed in terms of its seriousness, safety implications, complexity and degree of urgency;
- complaints are responded to within appropriate timeframes;
- complainants are advised of any statutory or other right of review if they are not satisfied that their complaint has been satisfactorily resolved;
- complainants will not suffer any reprisal from Council or a Council officer for making a complaint; and
- complaints are properly monitored with a view to continuous improvement of Council's performance and service standards.

Complaint Lodgement Options

Complaints may be lodged with Council either:

- by email addressed to mail@scenicrim.qld.gov.au;
- by fax to Council at 07 5540 5103;
- in writing at a Council Service Centre;
- by letter addressed to: Chief Executive Officer, Scenic Rim Regional Council, PO Box 25, BEAUDESERT QLD 4285; or

Administrative action complaints may also be made verbally to an on-duty Council Administrative Officer, other than complaints of a complex or detailed nature which may require detailed investigation and analysis of the facts presented.

Persons who display unreasonable complainant conduct may be required to submit their concerns to Council in writing.

Where requested, Council will provide appropriate assistance to persons with language or physical disabilities which inhibit their capacity to formally lodge a complaint.

Anonymous complaints will be accepted however such anonymity may inhibit Council obtaining further particulars regarding the subject matter or providing feedback to the complainant.

Complaint Management Processes

Complaint processes shall promote:

- Natural justice;
- Timeliness;
- Tracking and monitoring; and
- Feedback and resolution.

Where an established objection or appeal process is available to a complainant in respect of a decision which has been made (e.g. by appeal against a Development Approval), the complaint will be taken to have been resolved when the complainant is referred to that process.

The process to manage administrative action complaints is detailed in Attachment 1.

The process to manage competitive neutrality complaints is detailed in Attachment 2.

Privacy and Confidentiality

Complaint records will contain personal information as defined in the *Information Privacy Act 2009*. Council will manage that information in accordance with statutory requirements and its Information Privacy Plan. Complainants will be advised of Council's complaints management processes and progress made in resolving their complaint.

Council may be obliged to disclose a complainant's personal details to an external body for investigation or under legal or statutory processes. A complainant's identity may become obvious to another party as a consequence of an investigation process or subsequent enforcement action.

DEFINITIONS

An **administrative action complaint** is a complaint that—

- (a) is about an administrative action of a local government, including the following, for example—
 - (i) a decision, or a failure to make a decision, including a failure to provide a written statement of reasons for a decision;
 - (ii) an act, or a failure to do an act;
 - (iii) the formulation of a proposal or intention;
 - (iv) the making of a recommendation; and
- (b) is made by an affected person.

An **affected person** for an administrative action complaint is a person who is apparently directly affected by an administrative action of a local government.

An **affected person** for a competitive neutrality complaint is—

- (a) a person who—
 - (i) competes with the local government in relation to the business activity; and
 - (ii) claims to be adversely affected by a competitive advantage that the person alleges is enjoyed by the local government; or
- (b) a person who—
 - (i) wants to compete with the local government in relation to the business activity; and
 - (ii) claims to be hindered from doing so by a competitive advantage that the person alleges is enjoyed by the local government.

Business activity, of a local government, means trading in goods and services by the local government.

A **competitive neutrality complaint** is a complaint that—

- (a) relates to the failure of a local government to conduct a business activity in accordance with the competitive neutrality principle; and
- (b) is made by an affected person.

Under the **competitive neutrality principle**, an entity that is conducting a business activity in competition with the private sector should not enjoy a net advantage over competitors only because the entity is in the public sector.

Council officer includes a volunteer or contractor working for Council.

Day means working day.

Unreasonable complainant conduct is conduct as described in *Managing Unreasonable Complainant Conduct Practice Manual* published by the Queensland Ombudsman and includes behaviour by vexatious and unusually persistent complainants.

RELATED DOCUMENTS

Local Government Act 2009

Local Government Regulation 2012

Complaints Management Policy CM03.14CP

Managing Unreasonable Complainant Conduct Practice Manual published by the Queensland Ombudsman

This guideline supports the Scenic Rim Regional Council Corporate Plan 2018-2023, in particular Theme - Open and Responsive Government.

Approved By:

SCENIC RIM REGIONAL COUNCIL

Adopted 26.11.2018

Version Information

Version No.	Date	Key Changes
1		Corporate and Community Service Committee 20.11.2018 Item No. 3.3 Existing policy redrafted into new policy template and adoption of new guideline.

Attachment 1

ADMINISTRATIVE ACTION COMPLAINTS PROCESS

Background

This process has been prepared in compliance with Section 268 of the *Local Government Act 2009* and Chapter 9 Part 4 of the *Local Government Regulation 2012*.

This process is to be used to manage all Administrative Action Complaints within a framework of:

- Initial complaints investigation and resolution;
- Independent internal investigation and resolution; and
- External review.

The Chief Executive Officer has determined which officers within the organisational structure are assigned responsibility for managing Administrative Action Complaints. Complaints received will be registered in Council's Records Management System and referred for attention by the responsible officer. Copies of complaints will be referred to Council's Governance section and Council's Customer Service Coordinator for monitoring purposes.

Stage 1 Process

Referral Officers should conduct a preliminary assessment of the severity, safety implication, complexity, impacts and seriousness of complaints referred for their attention to establish:

- Whether priority attention should be given to dealing with the complaint matter and responding to the complaint;
- Whether they are the appropriate person to respond to the complaint under the directions issued by the Chief Executive Officer;
- Whether they could have a conflict of interest in dealing with the complaint;
- Whether the complaint should be managed as a Public Interest Disclosure (as defined in ss12-13 of the *Public Interest Disclosure Act 2010*); or
- Whether the complaint is about Corrupt Conduct as defined in Chapter 1 Part 4 Division 2 of the *Crime and Corruption Act 2001*.
- Where the Referral Officer has concerns that it may be inappropriate for them to manage the complaint, they should seek direction from the Coordinator Governance and Corporate Policy or from an Executive Officer of Council. This preliminary process should generally be completed within two business days of receipt.

Referral Officers should exercise sound judgement in determining the appropriate level of investigation to be given to each complaint received, including:

- identifying the true nature of the complaint and issues for investigation (this may involve contacting the complainant);
- understanding relevant legislation and policy;
- identifying the potential sources of information;
- properly recording relevant information obtained during the investigation;
- outlining how complainants will be advised of the progress and outcome of their complaint;
- giving people an opportunity to comment on information adverse to their interests (natural justice);
- assessing information and sources impartially (including avoiding any possible conflict of interest);
- ensuring findings are soundly based; and
- ensuring adequate records are kept.

The Referral Officers may curtail investigation of complaints where they deem:

- the complaint is trivial, frivolous or vexatious;
- the complaint has been made by a person with no direct interest in the matter;
- the complaint is a matter which has not been pursued by seeking a more reasonable remedy;
or
- investigation would be an unnecessary or unjustifiable use of resources

Within 10 days of receipt, the Referral Officer must provide the complainant with either:

1. acknowledgement that the complaint has been referred for their investigation and that a response will be provided within 60 days of that acknowledgement; or
2. advice of the action taken or decision made in respect of the complaint.

Where the complaint is received in writing, the response should generally be provided via the same medium. Decision letters should:

- provide adequate reasons for decisions;
- offer remedies where appropriate; and
- outline the complainant's right of review.

Stage 2 Process (Internal Review)

A complainant dissatisfied with the outcome of their complaint under Stage 1 (above) may request a review of the decision. Review requests will be referred to Council's Governance section for detailed investigation and report to the Chief Executive Officer who will then make a Stage 2 decision.

Council's Governance section may curtail investigation of complaints where they deem:

- the complaint is trivial, frivolous or vexatious;
- the complaint has been made by a person with no direct interest in the matter;
- the complaint is a matter which has not been pursued by seeking a more reasonable remedy;
or
- investigation would be an unnecessary or unjustifiable use of resources

Within 10 days of receiving a Stage 2 complaint, Council's Governance section will provide the complainant with an acknowledgement notice advising when it is anticipated that a review decision will be provided. That proposed decision date will be within 60 days of acknowledgement.

Following completion of the review, the Chief Executive Officer will provide the complainant with:

- advice of their decision;
- reasons for that decision; and
- advice of the complainant's right to make a Stage 3 Appeal.

Stage 3 Process – Appeal of Reviewed Decision

A person dissatisfied with a decision made under the Stage 2 review process may submit an appeal to the Queensland Ombudsman. Information on how to contact the Queensland Ombudsman will be forwarded to the complainant with the Stage 2 response.

Attachment 2

COMPETITIVE NEUTRALITY COMPLAINTS PROCESS

This process has been prepared in compliance with Section 48 of the *Local Government Act 2009* and Chapter 3 Part 2 Division 7 of the *Local Government Regulation 2012*.

Council determines annually the business activities to which the competitive neutrality principle will be applied during the coming year.

Raising Concerns

A person may raise concerns about alleged failure of a Council business entity to comply with the competitive neutrality principle in conducting the business activity.

The Manager responsible for the relevant business activity will provide a response clarifying the matters in contention and, if the person is dissatisfied with this explanation, will advise them of their right to lodge a Competitive Neutrality Complaint.

Formal Complaints

Competitive neutrality complaints must be made in writing and addressed to the Chief Executive Officer. The complaint must contain—

1. details of the business entity's alleged failure to comply with the competitive neutrality principle in conducting the business activity the subject of the competitive neutrality complaint; and
2. information that shows:
 - a. the person (the **complainant**) is, or could be, in competition with the business entity; and
 - b. how the complainant is, or may be, adversely affected by the business entity's alleged failure; and
 - c. the complainant has already made a genuine attempt to resolve the complaint raising concerns with the Council Manager (as above).

Referring Complaints

Competitive Neutrality Complaints will be referred to the Coordinator Governance and Corporate Policy.

The Coordinator Governance and Corporate Policy will provide the complainant with acknowledgement of their complaint and will refer the complaint to its referee (the Queensland Competition Authority (QCA)) within 10 business days for investigation and report.

Referee's Reports

Reports by the referee will then be referred to the next available Council Meeting to determine whether to implement the recommendations in the referee's report and to record reasons for that decision.

Copies of Council's decision regarding the referee's report will be provided to the complainant and the QCA.

Recording of Complaints

Council will record all Competitive Neutrality Complaints, decisions and recommendations and will make available for viewing in the Council's Public Office.