

COR005 – Corporate Processes Policy

1. POLICY CERTIFICATION

Policy Title:	Corporate Processes
Policy Number:	COR005
Category:	Corporate Services and Sustainability
Classification:	Policy
Status:	Approved, In Force.

2. PURPOSE

This Policy outlines the principles pertaining to, and key requirements of Council's corporate processes.

3. ORGANISATIONAL SCOPE

This Policy is corporate and applicable across all Council Divisions and staff members who hold executive and decision-making functions and utilise or otherwise engage with the prescribed corporate processes.

4. POLICY STATEMENT

As a local government body, Roper Gulf Regional Council (Council) has legislative obligations, as prescribed in the *Local Government Act 2019*, other applicable Acts of the Territory and the Commonwealth and their statutory instruments.

Council also undertakes a range of fee-for-service activities on behalf of the Territory and the Commonwealth, which have additional legislative and contractual obligations beyond that ordinarily applicable to local government.

All Council members and staff have an inherent obligation to uphold the public interest and thus discharge their duties without fear or favour, affection or ill will. Council has corporate processes in place to ensure compliance with its obligations.

Council's corporate processes are summarised to consist of the following categories:

1. Organisational Compliance;
2. Execution of Function and Contract;
3. Regulatory Compliance;
4. Administrative Decisions;
5. Complaints;
6. Administrative Review.

The Chief Executive Officer (CEO) and senior Council staff comprising of the General Managers and line managers who have delegated executive and decision-making functions as outlined in Council's Delegations Manual must ensure that they comply with the principles and requirements of this policy whenever applying Council's corporate processes.

5. DEFINITIONS

Ad literam	To the letter. Strict compliance with a prescribed requirement.
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Administrative Decision	<p>Any decision taken in relation to administration of an Act (or statutory instrument) by a government body, authority or organ that affects another party.</p> <p>A decision made by Council or a Council staff member who holds delegated executive and decision making functions, pertaining to the discretionary exercise of a function or an act, or omission, that form within the scope and purpose of their managerial and operational duties that affects another party.</p> <p>An administrative decision includes the decision to act, or refuse to act, or refuse to make a decision or otherwise deal with a matter.</p>
Administrative Review	<p>The formal internal review of an Administrative Decision and its <i>ratio decidendi</i> against applicable law, contractual provisions, precedents and/or Council policy, by an unbiased or disinterested decision-maker of equal or greater qualification and delegated function than the original decision maker.</p> <p>The outcome of an Administrative Review can affirm, overturn, or amend the original Administrative Decision.</p> <p>Administrative Decisions may be reviewed internally as described above, or externally by a Civil and Administrative Tribunal.</p> <p>Council or its Committees may review specific Decisions that are prescribed by applicable law as reviewable.</p>
Authorised Officer	<p>A staff member appointed under an Act to administer specific functions of that Act (e.g. Part 9.7 <i>Local Government Act 2019</i>), generally of a compliance and enforcement nature.</p>
Complaint	<p>For the purposes of this Policy, a complaint is a formal allegation that Council, or one or more of its Elected or Appointed Members, or its staff members have breached one or more specific legislative, contractual, or policy provisions through an act, or an omission to act when there was a formal obligation to, or some other misconduct.</p> <p>A Complaint does not fall within the scope of this Policy if it does not allege a breach of legal, contractual, or policy obligation e.g. disagreement with a formal Administrative Decision or operational disposition.</p>
Corporate	<p>An organisation or group (e.g. Council) formed as a singular entity. Applicable to an organisation as a whole rather than in part.</p>
Evidential Burden	<p>The duty or obligation of a person or party to adduce evidence in support of a proposition, decision, or allegation.</p>
Modus Operandi	<p>The manner in which a thing or person works; a characteristic method of operation.</p>

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Natural Justice	<p>The right to a fair hearing and the opportunity to present one's case. The right to have a decision made by an unbiased or disinterested decision maker and for that decision to be made on logically probative evidence.</p> <ul style="list-style-type: none"> • <i>Salemi v Mackellar (No 2)</i> (1977) 137 CLR 396; 14 ALR 1. • <i>Lahose v Arthur (No 3)</i> (2009) FCA 1118 • <i>Kioa v West</i> (1985) 159 CLR 550 <p>Denial of natural justice is a ground for review of an administrative decision where that decision might affect a person's rights, interests, or legitimate expectations.</p>
Organisational Compliance	An organisation (e.g. Council) complying with the legislative or contractual obligations applicable to it.
Prima Facie	At first glance. A concept pertaining to evidential burden that assesses whether the available evidence is sufficient in both quantity and quality to support a specific proposition, argument, or allegation.
Primus Inter Pares	First among equals. Having precedence over but no greater authority than.
Probative Value	<p>The extent to which evidence, if adduced, could rationally affect the assessment of the probability of the existence of a fact in issue.</p> <p>The weight and bearing of an evidential item used in support of a proposition, argument or allegation.</p>
Public Interest	<p>A concern common to the public at large, or a significant portion of the public, rather than a specific concern of a particular party, whether public or private.</p> <p>The concern of the public rather than those of the private, personal, parochial, or partisan.</p> <p>A concept aggregating any number of interests that may bear upon a disputed question that is of general – as opposed to merely private – concern.</p> <p>The objective of or the approach to be adopted, in decision-making rather than a specific and immutable outcome to be achieved.</p> <p>The test which determines whether a matter is in the public interest or not has two (2) components:</p> <ol style="list-style-type: none"> (1) Objectives and Outcomes – that the objectives and outcomes of the decision-making process are in the public interest, and, (2) Process and Procedure – that the process adopted and procedures followed by decision-makers in exercising their discretionary powers are in the public interest.

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Ratio Decidendi	The reason on which a decision is based.
Regulatory Compliance	<p>The implementation and application of legislation and statutory instruments by an appointed regulatory body.</p> <p>As applicable to Council: Council implementing and applying the regulatory provisions of the <i>Local Government Act 2019</i> and its statutory instruments e.g. applicable By-Laws, and any other Act of the Territory or the Commonwealth which Council may be appointed to apply either in part or in full.</p>
Stare Decisis	The decision stands. Doctrine of precedence operating to secure certainty in decision-making.

6. PRINCIPLES

The following principles strictly apply to Council's corporate processes:

(1) Organisational Compliance

All staff members who hold executive and managerial functions must be aware of Council's legislative, contractual, and policy obligations as applicable to their scope and function, and ensure that their respective operational plans and *modus operandi* prioritises compliance.

Compliance considerations prevail over operational expedience or convenience.

(2) Execution of Function and Contracts

Council undertakes a range of operations arising from both legislated and contractual obligations. Legislated obligations include providing core services prescribed by the *Local Government Act 2019*. Council also provides other (agency) services on behalf of the Territory or the Commonwealth on a fee for service basis, which are subject to their own contractual terms and conditions, as well as additional situational legislative obligations.

All staff members who hold delegated executive and managerial roles must ensure that these obligations are met as close to *ad literam* as practicable. If strict compliance is not practicable substantial compliance as circumstances of the particular matter allow suffices provided that it is captured within the Corporate Information System as a deviation or variation.

A deviation or variation from a prescribed obligation or criterion must be documented and relevant authorisations are to be obtained. When proposing a deviation or variation, the evidential burden in support of the proposition rests with staff member responsible for the execution of a contract.

This process including supporting evidence and *ratio decidendi* must be formally captured in the Corporate Information System.

(3) Regulatory Compliance

Council has a limited regulatory compliance function pertaining to the application and enforcement of the *Local Government Act 2019*, its statutory instruments including By-Laws, and any other Act which it may be appointed to administer in part or in full.

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Council believes that voluntary compliance is preferable to enforced compliance and endeavours to achieve this through proactive education and engagement of its constituents and other stakeholders.

Council does recognise that at times voluntary compliance may be insufficient, and enforcement action may be required. When determining if, and to what extent enforcement actions are applied, Council and authorised staff members (including authorised officers) must weigh up the nature of the alleged offence or non-compliance matter against the interests of Council, its constituents, and the general public.

Regulatory compliance decisions are examples of Administrative Decisions and are bound by the same requirements.

(4) Administrative Decisions

Council has a legislated obligation to uphold the interest of its constituents and the public interest in general. To this end, it must operate in a fair, consistent, rational and transparent manner. Staff members who make Administrative Decisions must ensure that these principles are applied to the decision making process and are required to demonstrate the following:

- (a) **Compliance:** the Decision *must* comply with applicable law and other obligations;
- (b) **Fairness:** the Decision *must* be based on applicable law and balance the interest of the applicant or third party against operational capability and impact, and the interest the public generally;
- (c) **Reason:** the Decision *must* be rational, based on logically probative evidence. The *ratio decidendi* and pertinent information must be captured when the decision is made, and formally recorded with the Decision within Council's Corporate Information System;

The *ratio decidendi* must be of sufficient detail so as to be able to withstand close judicial and ministerial scrutiny;

The *ratio decidendi* must be provided whenever a Notice of Decision is made;

- (d) **Consistency:** the Decision *must* be consistent with other Decisions on similar matters under similar circumstances. In other words, the concept of *stare decisis* applies and must be adhered to within the limits of practicality so that fairness and transparency are upheld;

Stare decisis applies to the extent of consistency rather than creating authoritative or binding precedent, with reference to individual decisions being regarded as *primus inter pares*;

- (e) **Review Provisions:** Administrative Decisions are reviewable and as such, the review rights must be provided to the applicant. Furthermore, the *ratio decidendi* or summary thereof must be provided to the applicant or interested party along with or as part of any Notice of Decision;
- (f) **Capture:** Administrative Decisions must be formally captured within Council's Corporate Information System.

(5) Complaints

Council affirms its commitment to meeting its prescribed obligations with due diligence. Council accepts formal complaints from the public, or from its Elected and Appointed Members, its staff, or any other party.

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All complaints are coordinated and recorded by the Corporate Services and Sustainability Division before being forwarded to the relevant General Manager based on their nature. All complaints against staff members are by default assigned to the General Manager Corporate Services and Sustainability.

The General Manager appoints an investigator to formally investigate the complaint, who must conduct a thorough and fair investigation and report if the available evidence supports the allegation. Complaints are categorised as *justified* or *not justified*.

Complaints when received are by default considered as *not justified* and may be formally investigated if they meet the minimum requirements outlined below.

The reasons a complaint shall not be investigated may include but are not limited to:

- The subject matter of the complaint does not relate to the conduct of a Council or staff member, while they were working or representing Council;
- The complaint does not allege misconduct, or offences, or involvement by Council staff or members;
- The allegations raised in the complaint are not the responsibility of Council;
- The complaint is trivial, frivolous, vexatious or otherwise not made in good faith;
- The time elapsed since the alleged incident and the lodging of the complaint;
- The complaint has been referred on for investigation by another body, such as Police;

If a complaint is investigated, the investigation officer must make a recommendation as to whether or not the matter is *justified* or *not justified*, and formally present an investigation report with these recommendations and gathered evidence, to the General Manager who then makes a decision on how to deal with the complaint.

Any decision pertaining to a complaint is an Administrative Decision which is subject to the aforementioned requirements. Furthermore, the following principles apply to the complaints process:

- (a) **Substance:** a complaint must be specific and must allege a breach of applicable law, obligation, or some other form of misconduct carried out by a Member or staff member. A complaint which is based on dissatisfaction or disagreement with an outcome or operation will not be considered as a formal complaint;
- (b) **Scope:** a complaint will only be considered if it falls within the scope of Council's responsibility. Council will not consider complaints which lack substance, or do not involve Council's Members or staff;
- (c) **Responsibility:** complaints are assigned to the relevant General Manager based on the nature of the allegation. All complaints against staff members are by default assigned to the General Manager Corporate Services and Sustainability. Complaints against General Managers are assigned to the Chief Executive Officer, while complaints against the Chief Executive Officer are assigned to Council. Complaints against Members are dealt with in accordance with the OCEO0003 Breach of Code of Conduct (Members) Policy.
- (d) **Natural Justice:** the concept of natural justice must be strictly adhered to during the complaints process, with the accused having the opportunity to know the allegations against them, and to have the opportunity to present their case. The respondent must be supplied with

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all material that is adverse, credible, and relevant to the allegation(s) against them, that is to be relied upon by any decision maker, so as to enable them to provide a fair and meaningful response to the same (Lohase v Arthur (No 3) (2009), Kioa v West (1985).

Strict compliance with this requirement is mandatory, and a failure to meet this requirement shall by default be considered to be malfeasance unless it is proven (beyond reasonable doubt) to be otherwise.

Any decision pertaining a complaint is an Administrative Decision, and must meet all prescribed requirements pertaining to *ratio decidendi* and evidential burden;

- (e) **Integrity:** Council endeavours to have complaints investigated in a timely manner, however the integrity and fairness of an investigation must not be compromised for the purposes of expedience or convenience. Furthermore, a matter must be deemed to be *not justified* unless a *prima facie* case has been established to demonstrate otherwise;
- (f) **Presumption of Innocence:** the accused is entitled to the presumption of innocence, with the evidential burden resting on the complainant and / or investigatory party;
- (g) **Standard of Proof:** Complaints are administrative matters and as such, any decision pertaining to the outcome of a complaint is an Administrative Decision.

Complaints will be determined to be justified if proved on the *balance of probabilities*, however if the matter alleges a specific offence against an act, or the matter is a regulatory compliance matter, it will have to be proved *beyond reasonable doubt*;

- (h) **Outcome:** the outcome of a *justified* complaint is dependent on the nature of the matter and may include formal disciplinary action or dismissal. The complainant is to be informed of the outcome of a complaint if practicable. The respondent must be formally informed of the outcome, and supplied with the *ratio decidendi* if an adverse finding/outcome is made.

(6) Administrative Review

Administrative Decisions are reviewable and may be subject to an Administrative Review on request of an applicant or affected party. This Policy applies to the internal Administrative Review process. An Administrative Review is a review of the original Decision to ascertain whether or not it was made according to applicable law, and the principles outlined in this Policy.

An Administrative Review is concerned whether or not the original Decision was made in a lawful and proper manner rather than whether or not the applicant agrees with the outcome of the decision.

In other words, the satisfaction or agreement of the applicant or affected party is not the subject of the Review.

An Administrative Review is itself an Administrative Decision, and must follow the same principles. The outcomes of a review are:

- (a) **Affirmation of the original Decision:** the Decision stands as made;

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(b) **Overturning of the original Decision:** the Decision is overturned and undone, and subject to a new decision-making process;

(c) **Amendment of the original Decision:** some elements of the original Decision remain, while others are overturned.

An Administrative Review is carried out by a disinterested decision maker of equal or higher qualification and delegation than the original decision maker.

Some matters may be reviewed by Council and/or its Committees as prescribed by applicable law.

An Administrative Review may also be carried out by an external party such as the Northern Territory Civil and Administrative Tribunal, depending on the nature of the Decision.

7. APPLICABLE LAW

Cited Acts	<ul style="list-style-type: none"> <i>Local Government Act 2019</i>
Applicable Acts (not exhaustive)	<ul style="list-style-type: none"> <i>Information Act 2002</i>; <i>Interpretations Act 1978</i>; <i>Northern Territory Civil and Administrative Tribunal Act 2014</i>; <i>Evidence (National Uniform Legislation) Act 2011</i>; <i>Fair Work Act 2009</i> (Cth).
Cited Case Law	<ul style="list-style-type: none"> <i>Salemi v Mackellar (No 2)</i> (1977) 137 CLR 396; 14 ALR 1 <i>Lahose v Arthur (No 3)</i> (2009) FCA 1118 <i>Kioa v West</i> (1985) 159 CLR 550
Other Reference Material	<ul style="list-style-type: none"> Butt, P. (2004). Concise Australian Legal Dictionary (Third Edition). LexisNexis Butterworths; Blackstone, W. (1783). Commentaries on the Laws of England (D. Lemmings & W. Prest, Eds.; 1st ed., Vol. 1). Oxford University Press.

8. DOCUMENT CONTROL

Policy Number	COR005
Policy Owner	Corporate Services and Sustainability
Endorsed by	Council
Date approved	28 October 2020, 28 August 2024
Revisions	24 May 2021 (Administrative), 28 August 2024
Amendments	Nil
Next revision due	August 2028