



Shire of Denmark

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Your Objection, Appeal or Review Rights Explained (of Local Government Decisions)

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

Please note this information is not related to making a complaint about a Council process, service or facility. Council's Complaints Management Policy (P040214), adopted Complaints / Grievance Procedure (P040215) and related forms apply in these instances.

*"In giving advice of a refusal, approval or authorisation (including a license or permit) with or without conditions, Council's service promise is that its 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 due to Council Policy."*

Some more common examples of decisions by Council or its Officers whereby an aggrieved person may lodge an objection or appeal or request a review are explained in the pamphlet.

Please note that this is not an exhaustive list.



Objection to Rate Records - Sections 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 —

- i. with respect to the identity of the owner or occupier of any land; or
- ii. 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.

For objections to valuations – please refer to that section of the pamphlet following.

Further information about objection and appeal rights relating to your property's rate records should be directed to Council's Rate Officer on 9848 0300 or via email to enquiries@denmark.wa.gov.au

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 —

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

Further information about objection and appeal rights relating to your properties valuation should be directed to Council's Rates Officer on 9848 0300 or via email to enquiries@denmark.wa.gov.au

For further information visit the website of the State Government Agency which issues valuations at <http://www0.landgate.wa.gov.au/property-reports/land-values/lodging-an-objection>

Enrolment on the Council's Electoral Roll – Sections 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 LGA is entitled to appeal that decision to the Electoral Commissioner of WA in accordance with Section 4.32 of the Local Government Act and associated Regulations. Advice of how an aggrieved person can make this appeal will be included on your advice of rejection of enrolment application.

Further information about appealing your rejection of enrolment on a Council electoral roll should be directed to Council's Director of Finance & Administration on 9848 0300 or via email to enquiries@denmark.wa.gov.au

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:

1. Apply to the Shire 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 Planning Services, 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.
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.

NB: If an applicant/owner lodges a 'Request for Reconsideration of a Determined Application' with the Shire, 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.

Further information about your review rights (of a Planning Decision) to the SAT should be directed to Council's Director of Planning & Sustainability on 9848 0300 or via email to enquiries@denmark.wa.gov.au

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

Note: Appeal rights relating to decisions made by the Great Southern Joint Development Assessment Panel are dealt with by the Panel and not the Shire of Denmark.

Other Decisions made pursuant to the Local Government Act (LGA) 1995 Section 9.1 to 9.9 (or its 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 Local Government Act* (LGA) 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 employee *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 LGA (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 LGA) 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 -
 - a) substituting it for another decision; or
 - b) 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 State Administrative Tribunal (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 State Administrative Tribunal 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

The State Administrative Tribunal (SAT) came into operation on 1 January 2005. 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.

Further information about objection, review and appeal rights relating to a Council decision made pursuant to the Local Government Act 1995 or a Council's Local law, or to obtain an electronic copy of the Objection Form 4, should be directed to Council's Director of Finance & Administration on 9848 0300 or via email to enquiries@denmark.wa.gov.au

Third Party Appeal Rights

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).

Infringements Issued by Council Officers

Where Council 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 Shire of Denmark seeking a review of the matter.

Communicating advice of a decision

The information about objection, appeal or review rights contained in this pamphlet 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.

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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 Shire of Denmark FOI Statement
- The Public Interest Disclosure (PID) Act 2003 and the Shire of Denmark PID Disclosure Statement
- The Local Government Rules of Conduct Regulations 2007

For further information about your rights to review, appeal or objection to a Council decision or conditions relating to an approval, refusal, license or permit, please contact the Council's Administration on 9848 0300 or via email to enquiries@denmark.wa.gov.au

For further information about the your rights to complain about the process that led to the decision then you might like to obtain a copy of Council's Complaint Policy and or refer to the whole of Western Australian Government Complaint website, <https://www.wa.gov.au/content/complaints> or the Office Parliamentary Commissioner (Ombudsman) at www.ombudsman.wa.gov.au

Form 4

Should you wish to lodge an objection you are welcome to utilise the following Form or repeat the primary content of the form in a letter to Council. Alternatively, an A4 copy of the Form can be downloaded at <http://www.denmark.wa.gov.au/documents/governance-documents-and-forms/forms>



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Form 4
Local Government Act 1995
Local Government (Functions and General) Regulations 1996 [reg.33(1)]

OBJECTION UNDER SECTION 9.5 OF THE ACT

Note: An A4 electronic copy of this can be downloaded from our website at
http://www.denmark.wa.gov.au/governance-documents-and-forms

To the Shire of Denmark

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)

(8)

(9)

Person objecting

- (1) Insert name of local government.
(2) Insert full name of person objecting.
(3) Insert postal address of person objecting.
(4) Identify decision to which objection is made.
(5) Give details of decision.
(6) Give details of objection.
(7) Plans, specifications, letters, notices, or other appropriate documents.
(8) Insert date.
(9) Insert signature of person objecting.