

<b>INTERNAL REVIEW OF A COUNCIL DECISION POLICY</b>	
Council Policy	
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## 1. POLICY STATEMENT

Council, its committees, staff and contractors make decisions every day which impact on members of the community. It is imperative that these decisions are fair, objective and subject to review. This Policy outlines the process that will be applied when dealing with applications for an internal review of decisions of the Council, employees of the Council, and other persons acting on behalf of the Council.

## 2. PURPOSE

### 2.1 Purpose

2.1.1 This policy is required by Section 270(1) of the *Local Government Act 1999* and forms part of the Council's processes for dealing with complaints. The aim of this policy is to provide a fair, consistent and structured process for Council's customers if they are dissatisfied with a Council decision or service.

2.1.2 Council's procedures are designed to ensure that every person has the opportunity to make an application for review of a decision covered by this policy and that an unbiased review is undertaken based on sound evidence.

### 2.2 Scope

2.2.1 This policy forms part of Council's overall complaints handling process, refer to the Complaints Policy.

2.2.2 The Internal Review of Council Decisions Policy will apply to all applications for review of decisions of Council, its employees or other persons acting on behalf of Council, except where other statutory processes are available to the applicant:

- Dog and Cat Management Act
- Local Government (Elections) Act
- Environment Protection Act
- Expiation of Offences Act
- Freedom of Information Act
- Industrial Relations matters
- Council By-Laws and Orders
- Behaviour Standards issues
- Decisions made under legislative delegations (Food Act, SA Public Health Act)
- Commonwealth Funded Program matters
- Planning, Development and Infrastructure Act
- Matters referred to the Local Government Association Mutual Liability Scheme

2.2.3 The processes in this Policy do not provide for a review of a Council decision in relation to a refusal to deal with, or determination to take no further action in a complaint relating to a Council Member's behaviour, or in relation to a recommendation from an investigation of the Ombudsman.

## 2.3 Strategic Reference

### 5 Governance and Financial Sustainability

5.5 We meet or exceed legislative and accreditation requirements for all relevant programs.

## 3. PRINCIPLES

3.1 An Internal review of a Council decision enables the Council to reconsider all the evidence relied on to make the original decision and additional available evidence if relevant. This procedure is generally a last resort in the complaint handling process, but may also be used in situations which are not able to be resolved by other means.

3.2 The procedure for reviewing decisions is based on five principles. These principles are:

- Fair treatment: which requires impartiality, confidentiality and transparency at all stages of the process.
- Accessibility: to be accessible there must be broad public awareness about Council's policies and procedures and a range of contact options.
- Responsiveness: this will be achieved by providing sufficient resources, well trained staff and ongoing review and improvement of the Council's systems.
- Efficiency: requests and complaints will be resolved as quickly as possible, while ensuring that they are dealt with at a level that reflects their level of complexity.
- Integration of different areas of Council where the matter under review overlaps functional responsibilities.

### 3.3 Applicant

3.3.1 A person with a sufficient interest in a decision of the Council, a council employee or person acting on behalf of the council, may make a written application for a review of that decision. An application for a review of a decision must be made within 6 months of the decision being made (unless a longer period for submitting a particular application is approved by the Chief Executive Officer in appropriate cases).

3.3.2 It is essential that no one is excluded from lodging an application for review because of any difficulties they may have representing themselves. All Council staff are expected to offer assistance where appropriate and provide it on request, including assistance in documenting the reasons for the review in writing when circumstances warrant. If necessary, access to interpreters, aids or advocates should be arranged to ensure that an applicant is treated equitably and has access to the review process.

### 3.4 Application Process

An application for review must be submitted in writing in the appropriate form *Internal Review of a Council Decision - Application Form*, available on Council's website. The application for a review must be accompanied by a fee, as prescribed by the Minister, and set out in Council's Fees and Charges Register. Payment of the fee can be made at the Civic Centre Reception, 4 Mackay Street, PORT AUGUSTA SA 5700

### 3.5 Contact Officer

3.5.1 A Contact Officer will be appointed by the Chief Executive Officer as the initial point of contact for applicants. The Contact Officer will not include any person who has a personal relationship with the applicant, a personal interest in the outcome of the matter, or previously been involved in the decision which is the subject of the review.

### 3.5.2 The Contact Officer will:

- determine whether or not the decision is subject to review under this policy
- work in conjunction with an appropriately delegated officer to determine how the review will be handled
- advise the applicant of the process to be undertaken and the time of the next contact
- ensure the application is properly lodged and assigned
- explain the procedure to the applicant and explore any alternative options
- acknowledge the receipt of an application for review
- include in the annual report a summary of all applications for review received and the outcomes of the applications
- outline the timeframes involved and the action to be taken in the first instance
- undertake a preliminary investigation to determine what actions have already been taken to try to resolve the matter
- keep the applicant informed of progress
- ensure adequate records are maintained

### 3.6 Council response to an application

3.6.1 Applications for a review of a decision must be responded to within 5 business days, acknowledging receipt and advising of the expected timeframe for dealing with the matter. Council will use its best endeavours to ensure that a review of the decision will be completed within 21 business days. However, if the decision is to be reviewed by the elected Council or an external investigator or in more complex cases, a review may take longer.

3.6.2 The applicant will be regularly informed of progress, either by email, letter or telephone.

3.6.3 The Council is entitled to refuse to consider an application for review if:

- a) the application is made by an employee of the Council and relates to an issue concerning his or her employment;
- b) It appears that the application is frivolous or vexatious;
- c) the applicant does not have a sufficient interest in the matter; or
- d) the council or person (as the case requires) is satisfied that the subject-matter of the application has been or is already the subject of a review by the council or an investigation, inquiry or review by another authority.

Refusing an application for review will not be done lightly and reasons for the refusal will document the evidence on which a refusal is based.

### 3.7 Applications for a review of the impact of rates or services charges

If the Council receives an application for a review of a decision concerning the financial impact of Council rates or services charges, these will be dealt with as a matter of priority. Where circumstances warrant, Council will consider financial relief or the granting of concessions in line with the provisions of the *Local Government Act*.

### 3.8 Reviewer

3.8.1 The elected Council will be the reviewer:

- a) when the decision being reviewed was made by a committee of the Council or the CEO;
- c) in other circumstances as determined by the CEO or resolution of the Council.

3.8.2 An external person or organisation will be the reviewer where the decision is a decision of the elected Council. The outcome of the review will be reported to the Council, and Council will consider the outcome of the review and determine whether to affirm, vary or revoke the reviewed decision.

3.8.3 For all other matters, the CEO will conduct the review or appoint a reviewer from the following:

- A Senior staff member
- A panel comprising of Council Members and Senior staff
- An external person or body

### **3.9 Role of Reviewer**

3.9.1 The reviewer will undertake a merits review of the decision.

3.9.2 The reviewer should consider all materials and information which were available to the original decision maker and any additional relevant material and information which has been provided or become available during the course of the review.

3.9.3 The reviewer will 'stand in the shoes' of the original decision-maker and determine whether the decision is appropriate on the basis of the relevant circumstances and available information and materials.

### **3.10 Providing 'Procedural Fairness'**

3.10.1 The reviewer will observe the principles of procedural fairness when undertaking the review. To observe the principles of procedural fairness:

- a) an applicant is entitled to put forward information and materials in support of the application for review
- b) be informed of the proposed outcome of the review, have the opportunity to make submissions to the reviewer on the outcome and have these submissions taken into account
- c) the reviewer must not have a bias or perceived bias in respect of undertaking the review.

### **3.11 Outcome of review**

3.11.1 Where the reviewer is the elected Council, the elected Council should determine whether to affirm, vary or revoke the original decision.

3.11.2 Where the reviewer is a Council employee, the employee may determine whether to affirm, vary or revoke the original decision if they have the authority to make the decision. If the reviewer does not have a delegation enabling the making of the decision, then the reviewer should report the outcome of the review to the elected Council (or delegate) with a recommendation as to whether the decision should be affirmed, varied or revoked.

3.11.3 Where the reviewer is an external person or body then the reviewer should report the outcome of the review to the elected Council or CEO for a determination as to whether the decision should be affirmed, varied or revoked. An external reviewer cannot vary or revoke a decision made by or on behalf of Council.

### **3.12 Remedies**

3.12.1 Where the review of a decision upholds the applicant's grievance, remedy or response will be determined which is consistent and fair for both Council and the applicant. The remedy chosen will be proportionate and appropriate to the failure identified and may include, but is not limited to:

- returning the situation to its original status
- an explanation
- an apology or admission of fault
- a change to policy, procedure or practice
- a correction to Council records
- financial compensation or the waiving of a debt
- the remission of a penalty or remedial action
- disciplinary action
- referral of a matter to an external agency for investigation or prosecution.

3.12.2 Any action required will be undertaken promptly, and consideration given to whether changes are required to prevent the situation being repeated.

### **3.13 Options for Review available to applicants**

Applicants may seek external review through the SA Ombudsman, other legal appeal processes, or the Courts at any time during the internal review process. When advising an applicant of the outcome of a review, applicants will be advised of other options for review, any rights of appeal and the right to make a complaint to an external agency such as the SA Ombudsman.

## **4. RESPONSIBILITY & REVIEW**

### **4.1 Responsible Officer**

4.1.1 The Chief Executive Officer is responsible for the application of this policy.

4.1.2 The CEO has appointed the Director City Services as Council's Contact Officer.

### **4.2 Reporting**

Council's Annual Report will contain information about Section 270 applications for review of a decision, including:

- a) the number of applications for review made under this procedure;
- b) the types of matter to which the applications relate;
- c) the outcomes of applications under this procedure; and
- d) any other matters as may be prescribed by the regulations.

### **4.3 Availability**

This policy will be available on Council's website.

### **4.4 Review**

This policy will be reviewed within 12 months of a General Election for Local Government, or as required to meet other obligations.

## **5. REFERENCES**

### **5.1 Legislation**

Section 270 *Local Government Act 1999*

### **5.2 Other References**

Complaints Policy

Fraud and Corruption Prevention Policy

Internal Review of a Council Decision - Application Form

Requests for Service Policy

Public Interest Disclosure Policy