



COUNCIL PROCEDURE

Procedure Name	Internal Review of a Council Decision Procedure
Department / Officer	Office of the Chief Executive
Date Adopted	15 January 2001
Date/s Reviewed	June 2001; May 2002; July 2003; June 2004; November 2005; November 2007; March 2011; April 2011; 27 July 2015 (not adopted); 28 September 2015; 24 April 2017
Next Preview	Biennially
Attachments	1. Internal Review Application Form 2. Complaint Handling Flowchart

1. Purpose

The aim of this procedure is to:

- Provide a fair, consistent and structured process for any party dissatisfied with a decision or action of the council, employees of the council or other persons acting on behalf of the council.
- Identify the matters that must be referred to Council itself for review.
- Use information gained from the community to improve Council's services and operations.

2. Scope

Any person can apply for an internal review of a Council decision under this procedure however, in the first instance a person is encouraged to resolve a matter at the first point of contact under *Council's Complaint Handling Procedure*.

An application for an internal review of a decision should be made within six months of the decision. A longer time limit may be accepted in extenuating circumstances at the discretion of the Chief Executive Officer or the Council.

This Procedure will not apply where an alternate statutory appeal process is available for review, for example:

- A decision made under the Development Act 1993 in relation to a development application.
- Appeal under the Freedom of Information Act 1991
- The Courts in respect to Section 255 of the Local Government Act 1999
- Appeal under the Expiation of Offences Act 1996

However, matters that fall outside of statutory appeals procedures will be considered for the conduct of a Section 270 review based on the merits of the individual application.

3. Legislative Requirements

A full extract from the legislative provisions is provided in Council's Complaints Handling Policy however for the purpose of this Procedure Section 270 of the Local Government Act requires Council to establish procedures for the review of decisions of -

- (a) the council;
- (b) employees of the council;
- (c) other persons acting on behalf of the council.

In addition Council's policies, practices and procedures must also be directed toward using information gained from the council's community to improve its services and operations.

4. Definition

Alternative Dispute Resolution includes mediation, conciliation or neutral evaluation as set out in section 271 of the Local Government Act.

Applicant is the party lodging the requests for review of a decision. Examples include residents, ratepayers, members of a community group, users of Council facilities and visitors to the area.

Decision is a position adopted by Council, its employees or a decision of other persons acting on behalf of Council. It will generally be a judgment reached after consideration of relevant information.

Decision-maker refers to the individual or Elected Council responsible for the decision under review.

Employee includes a person employed directly by the Council in a full time, part time or casual capacity (whether that position is permanent or contractual) and persons providing services to, or on behalf of, the Council even though they may be employed by another party.

Mediation and conciliation is an intervention of a neutral third party to help parties in a dispute to resolve it.

Neutral Evaluation is a process where parties present their cases to a neutral third party (with expertise) who renders a non-binding reasoned evaluation on the merit of the case. During the process, the neutral may be invited to serve as mediator or facilitator.

Note: Mediation, conciliation and neutral evaluation provisions are set out in Section 271 of the Local Government Act 1999 and provided at Attachment 1 to this Procedure.

Review of a Council Decision is a process where a customer can seek a review of a decision made by the Council, an employee of the Council, or persons acting on behalf of the Council. These are dealt with under this procedure.

Reviewer refers to the individual or entity responsible for administering of a request for review of a decision under this Procedure.

5. Operating Procedure

5.1 Who can make an application for a Review of a Decision?

Any person who is affected by a decision may apply for review of the decision. For example: residents, ratepayers, members of a community group, users of the Council's facilities, and visitors to the area all have the right to apply for review.

Note: Staff should ensure that complainants have the opportunity of resolving their complaints quickly and less formally in accordance with Council's Complaints Handling Procedure in the first instance.

5.2 How to apply for review?

An application for review of a decision must be in writing on the appropriate form and addressed to the Council's Chief Executive Officer (CEO). The following information is required:

- The applicant's name and contact details.
- Details of the specific decision for review (date and person/body who made decision).
- Reasons for making the application including how the decision/action has impacted on persons.
- Any other information relevant to the application, including actions previously taken to resolve the matter (if relevant).

All staff are expected to offer assistance where appropriate to customers wishing to make a complaint under Council's Complaint Handling processes. This may involve access to interpreters, aids or advocates to ensure that they are treated equitably.

5.3 What matters may be excluded from review

Subject to Section 270 of the Act the Council, or CEO acting on its behalf (or CEO delegate) may refuse to consider an application for review where:

- The application is made by an employee of the Council and relates to an issue concerning his or her employment; or
- It appears that the application is frivolous or vexatious; or
- The applicant does not have sufficient interest in the matter.

5.4 Confirmation of Application

The CEO or delegate will consider whether the application is sufficiently clear to enable the identification of the specific decision which is to be reviewed and to enable a review to take place. If the application is not sufficiently clear the CEO or delegate will request an applicant to provide clarification to enable a review to take place.

Council will not commence a review until such time as the required clarification is provided to the reasonable satisfaction of Council's CEO or delegate.

5.5 Assignment of Internal Review Officer

Council has nominated the CEO or delegate as the Internal Review Officer (IRO) responsible for dealing with any application for review. The CEO will ensure that the IRO is independent of the original decision where possible.

5.6 Internal Review Process

Procedural fairness will be observed in dealing with an application for review. All parties will have the opportunity to express their point of view in relation to the decision under review and respond to issues raised during this process.

The IRO must comply with all aspects of the Council's Complaint Handling Policy including the underlying principles of complaint management.

The IRO will:

- Acknowledge receipt of a valid written application within 5 working days.
- Explain the procedure to the applicant.
- Assess the application and undertake a preliminary investigation to determine what actions have already been taken to try and resolve the matter.
- Determine (in consultation with the CEO) if an independent person or a review panel should be formed for the purpose of reviewing the application and prepare a report and recommendation(s) in relation to the complaint to assist in the consideration or reconsideration of the decision under review.
- Outline the timeframes involved and the action to be taken in the first instance.
- Keep the applicant informed of progress.
- Keep written records of interviews and the process undertaken.
- Ensure records are factual and objective.
- Ensure records are securely stored and logged in Council's Records Management System.
- Ensure that only those parties with a genuine need to view the material will be allowed access to the records.

A review may or may not result in the disputed decision being reconsidered or overturned however, nothing in this procedure prevents an applicant from making a complaint to the Ombudsman at any time under the Ombudsman Act 1972 (SA) or ICAC Act 2012(SA).

Where the IRO is not the CEO then this person must refer unresolved applications to the CEO to determine the next course of action under this Procedure.

5.7 Factors for consideration of an Internal Review

The role of the IRO is to review the decision in question to ensure that the decision-maker complied with the following procedural requirements and made the best possible decision in the circumstances:

- The decision must be within a power properly conferred on the decision-maker under the relevant Act.
- A decision-maker must consider all matters which are relevant to the making of the decision and not take into account matters which are not relevant to the decision.
- A decision-maker must not make a decision or exercise a power or discretion in bad faith or for an improper purpose.

- A decision-maker must ensure that findings of fact are based on evidence.
- Decisions must be reasonable.
- Those who may be affected by a decision must be accorded procedural fairness, which includes the principles of natural justice.
- A decision-maker must properly consider the application of existing Council strategies and policies.
- A decision-maker must not exercise a discretionary power at the direction of another person.

In carrying out a review of a decision, the reviewer will consider all the information and material that was before the original decision-maker and any additional relevant information or material provided by the applicant. The reviewer will 'stand in the shoes' of the original decision-maker and make the best decision available on the evidence.

This means the reviewer will do more than simply consider whether the decision is legally and procedurally correct. The reviewer will also consider whether a different decision would be better, based on the evidence. The process of merits review, as described above, will typically involve a review of the facts that support a decision, including any new evidence that may come to light.

5.8 Referral to the Elected Council (Tier 3)

Some matters will be referred to the Elected Council for consideration or re-consideration. The types of matters that will be referred to the Council itself include:

- A decision made by a resolution of the Council.
- A decision made regarding Council endorsed objectives and policies.
- A decision in relation to a recommendation for external mediation, conciliation or neutral evaluation under this Procedure.
- Any other matters at the discretion of the CEO and the Council.

Council requires the IRO to make a judgment about the application for review and the nature of matters raised within it so as not to refer matters for consideration of Council, which, whilst falling into the above categories, are of a relatively minor nature, and instead would be managed by the IRO and referred to Council for information purposes only. However, where such a matter is likely to be of interest to the wider community the IRO must consult with the Mayor before making such a judgment.

5.9 Review process by Council itself

Council is responsible for determining who will undertake the investigation and the preparation of a report for Council consideration.

Council may choose a review methodology including but not limited to:

- The CEO or other senior officer (not involved in the original decision) to conduct or determine the appropriate method of investigation and recommendation to Council.
- An independent person or organisation.
- A review panel to review the complainants application (which may, for example, comprise of Council staff and/or one or more elected members of Council or external consultants) to review the application and prepare a report and recommendation(s) to assist Council to consider or re-consider its original decision.

5.10 Timeframe for assessing an application

Council will aim to ensure that a review of the original decision will be completed within 28 business days however, if the decision is to be reviewed by Council, a committee, or an external panel there may be delays caused by meeting cycle timelines.

When the 28 day timeframe cannot be met, applicants will be provided progress reports by day 28 and every 14 days thereafter until the review is completed.

In accordance with Section 270(2)(ca) if Council receives an application for a review of a decision concerning the financial impact of Council rates or service charges, these will be dealt with as quickly as possible. Where circumstances warrant, Council will consider financial relief or the granting of concessions in line with provisions of the Local Government Act 1999 and Council's internal operating procedures.

If an application for review is not resolved to the satisfaction of the complainant, the complainant will be advised of other available options for review, such as the State Ombudsman.

5.11 Confidentiality

Council undertakes to maintain confidentiality as far as is possible ie information will only be shared on a needs to know basis and protection of personal information will be dealt with in accordance with Council's Privacy Policy.

The applicant will be encouraged to respect confidentiality as that is likely to achieve the fairest outcome for all parties.

However, the complainant must be informed in advance if the application for review will be referred to Council, as the matter will then usually be in the public domain.

5.12 Resolution

Where the review of a decision upholds the applicant's complaint and a decision of Council or its agents is amended an appropriate remedy or response will be determined which is consistent and fair for both Council and applicant.

Where circumstances are such that it is not possible to return to the original situation, or to rectify the outcome of the decision, it may only be possible to offer the following:

- an explanation (reasons for decisions)
- mediation
- an admission of fault
- a change to policy, procedure or practice
- a correction of misleading records
- financial compensation such as a refund of any fees
- the waiving of a debt
- the remission of a penalty
- disciplinary action
- referral of a matter to an external agency for further investigation or prosecution.

The remedy or response may be one, or a combination of these actions. The chosen remedy will be proportionate and appropriate to the failure in service and take account of what the applicant is seeking as an outcome of the review.

If an apology is required it will be done promptly and the applicant advised that appropriate action will be taken to ensure the problem is not repeated.

When advising an applicant of the outcome of a review, information will also be provided about alternative remedies and the right to make a complaint to an external agency such as the SA Ombudsman or the Minister.

No rights of appeal apply to a decision made under this Procedure.

Note: an applicant will always retain the right to seek other forms of resolution, such as contacting the Ombudsman, or taking legal action at any time. Note however that as a general rule, the Ombudsman prefers that matters be addressed by Council in the first instance, unless this is not appropriate in the circumstances.

5.13 Records Management

All documents, notes, photographs and correspondence must be retained and stored in accordance with Council's Records Management Policy. Applications for review and outcomes should be captured in such a way that information can be directly used for statutory reporting purposes and service improvements.

5.14 Reporting

The CEO or delegate will:

Report to Council annually on applications received (through the Council's Annual Report process) in accordance with Section 270 of the Act:

- the number of applications for review made
- the kinds of matters to which the applications relate
- the outcome of applications
- such other matters as may be prescribed by the regulations.

Make available reports that could inform service improvements via the Business Planning process.

6. Related Documents and References

Complaints Handling Policy
Complaint Handling Procedure
Request for Service Procedure
Records Management Policy
Unreasonable Complainant Conduct Policy
Fraud and Corruption Prevention Policy
Whistleblower Protection Policy
LGA Model Policies and Procedures
Ombudsman website documentation and audit recommendations