

Internal Review of Council Decisions

Policy and Procedure

Reference Number:	CR20/19125
Type:	Council Policy
Responsibility:	Director Corporate Services
Responsible Officer:	Principal Governance Advisor
Initial Adopted Date:	Council 19 January 2016
Last Review Date:	May 2020
Next Review Date:	May 2024
Legislation:	<i>Local Government Act 1999</i> Section 270
Related Documents:	Requests for Service (incl. Customer Service Charter) Complaints Handling (incl. Customer Service Charter) Code of Conduct for Council Employees Public Interest Disclosure Policy Financial Hardship Policy Protocol – Ombudsman Enquiry Procedure

1 Purpose

- 1.1 The Internal Review of Council Decisions Policy & Procedure (the Policy) supports Council's commitment to transparent decision making processes, and providing access to fair and objective procedures for the review of decisions.
- 1.2 This is required by section 270(1) of the *Local Government Act 1999* and forms part of the Council's processes for dealing with complaints.

2 Definitions

- 2.1 *Alternative Dispute Resolution* includes mediation, conciliation or neutral evaluation as set out in section 271 of the Local Government Act.
- 2.2 *Applicant* is the party lodging the requests for review. Examples include residents, ratepayers, members of a community group, users of Council facilities and visitors to the area.
- 2.3 *Business Day* means a day when the Council is normally open for business, i.e. Monday to Friday, excluding public holidays.
- 2.4 *Decision* refers to a position adopted by the Decision-Maker. It will generally be a judgement reached after consideration of relevant information, but does not include actions taken during the process of decision making. For example, investigations, requests for further information, internal consideration of the matter or referral of the matter to an external adviser, are not decisions.
- 2.5 *Decision-maker* refers to the individual or entity responsible for the decision under review.

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- 2.6 *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.
- 2.7 *Reviewer* refers to the individual or entity responsible for resolution of a request for review of a decision.

3 Scope

- 3.1 This Policy prescribes a three tier system for handling complaints, with internal review as the third tier in the complaint handling process. It will apply:
- when matters cannot be resolved satisfactorily; and/or
 - when the applicant makes a clear request for an internal review of decision by statutory process; and/or
 - when a decision has to be reviewed by the elected Council (See 8.1 Assignment of application for review).
- 3.2 This Policy will only apply to decisions of—
- (a) the Council;
 - (b) employees of the Council;
 - (c) other persons acting on behalf of the Council.
- 3.3 Some decisions made by the Council, a Council employee or on behalf of the Council are subject to review or appeal processes set out in legislation. This procedure cannot override or operate inconsistently with these statutory processes. Consequently where legislation provides for the review of, or appeal from, a type of decision, a decision of that type will not be reviewed under this procedure. Examples include:
- 3.3.1 objections to valuations made by the Council;
- 3.3.2 appeals against orders made pursuant to section 254 of the *Local Government Act 1999*;
- 3.3.3 appeals against the issuing of litter abatement notices under the *Local Nuisance and Litter Control Act 2016*;
- 3.3.4 appeals against destruction and control orders issued under the *Dog and Cat Management Act 1995*;
- 3.3.5 review of an expiation notice under the *Expiation of Offences Act 1996*;
- 3.3.6 external review processes under the *Development Act 1993* and/or *Planning Development and Infrastructure Act 2016*, including development assessment decisions; and
- 3.3.7 external review processes under the *Freedom of Information Act 1991*.

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- 3.4 Some matters may fall outside the scope of prescribed appeal procedures. An example may be a complaint where there is no appeal right (eg a non-complying development) or where Council has handled an alleged breach of the Development or Planning, Development and Infrastructure Act. Depending on the facts, such matters may be considered within the scope of this Policy.
 - 3.5 This Policy cannot operate on a type of decision which has been specifically excluded from review under legislation, either expressly or by necessary implication. For example, where development approvals under the Development Act are intended to have an operative effect from the time the decision was made, and are not capable of being varied or revoked by Council.
 - 3.6 While Council prefers to work with its customers to resolve requests for review quickly and effectively, an applicant will always retain the right to seek an internal review or 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.

4 Policy Statement

- 4.1 Council, its committees, staff and contractors make decisions every day which impact on members of the community. It is imperative these decisions are fair, objective and subject to review.
- 4.2 Council is committed to open, responsive and accountable government. This includes providing processes by which citizens adversely affected by a decision of Council can have their grievance considered.
- 4.3 This Policy will be easily accessible to ensure customers are fully aware of their right to request the review of a decision and the process that will be followed.
- 4.4 The procedure for reviewing is based on five principles. These principles are:
 - 4.4.1 Fair treatment: which requires impartiality, confidentiality, and transparency at all stages of the process.
 - 4.4.2 Accessibility: to be accessible there must be broad public awareness about Council's policies and procedures and a range of contact options.
 - 4.4.3 Responsiveness: this will be achieved by providing sufficient resources, well trained staff and ongoing review and improvement of the systems.
 - 4.4.4 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.
 - 4.4.5 Integration of different areas of Council where the matter under review overlaps functional responsibilities.

5 Application of Policy

Council has a three tier process for managing customer complaints, which includes immediate, informal resolution as well as established processes for review by senior staff

5.1 Immediate response to resolve the complaint

All staff are empowered to handle complaints in the first instance, and it is preferable that they are dealt with promptly at the initial point of contact and at the appropriate officer level.

5.2 Complaint escalated to a more senior officer

A complaint will be directed to a more senior officer of Council, where circumstances indicate that the complaint would be more appropriately handled at a higher level. This may occur, for example, where an officer has been involved in the matter that is the subject of the complaint, where the complaint is about an issue that requires a decision to be made at a more senior level, or where a complaint concerns a matter that ranges across more than one Council work area.

5.3 Internal review of a Council decision by statutory process

Internal review of a Council decision will be in accordance with this procedure. This procedure enables the Council to reconsider all the evidence relied on to make the original decision and additional available evidence if relevant. This process 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, such as a complaint about a decision of the CEO.

An application for review should only be made once the other mechanisms under the Complaints Handling Procedure have been undertaken, as these may resolve the matter more quickly. As the third tier in Council's complaints handling process, review under this procedure will generally apply when matters cannot be resolved satisfactorily under the other two tiers.

6 Applying for a review

6.1 Making an application

6.1.1 A person with a sufficient interest in a Council decision may make a written application for a review of that decision. An application for a review of a Council decision, provides Council with an opportunity to revisit a decision which has aggrieved an interested party. This may include an individual or a group, ratepayer, resident or business owner.

6.1.2 Depending on the particular circumstances, it may also include a person who is not the direct subject of the decision. For example, where a Council issues a permit for a person to keep more than the maximum number of dogs permitted under a by-law, a neighbour may seek an internal review of the decision. Council will determine whether a person has a sufficient interest to apply for an internal review of a decision, on a case-by-case basis.

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- 6.1.3 An application for review must be in writing and set out the reasons for applying for the review (that is, why the applicant believes that the decision is wrong). Although Council can be expected to have information and material relevant to the matter under review, an application for review may also include new relevant information, or evidence to support the application.
- 6.1.4 Applications should be addressed to the CEO. If the request is for an internal review of a decision made by the CEO, the application should be addressed to the Mayor. Applications may be delivered by mail or e-mail.

Post:

City of Prospect
PO Box 171
Prospect SA 5082

E-mail:

admin@prospect.sa.gov.au
Subject: Internal Review

Applications should be made within 6 months of the most recent Council decision on a matter. However, this timeframe may be extended by the CEO on a case by case basis.

6.2 Assisting with the application for review

- 6.2.1 It is essential that no one is excluded from lodging an application for review because of any difficulties they may have representing themselves. All 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.
- 6.2.2 If necessary, access to interpreters, aids, or advocates should be arranged to ensure an applicant is treated equitably, and has access to the review process.

6.3 Internal Review Contact Officer

- 6.3.1 An Internal Review Contact Officer (IRCO), appointed by the Chief Executive Officer, is the initial point of contact for applicants.
- 6.3.2 The role of the IRCO is to:
- (1) explain the procedure to the applicant and explore any alternative options to resolve the matter, such as alternative dispute resolution prior to an application for review;
 - (2) acknowledge the receipt of the application;
 - (3) maintain a register of all applications for review received, and the outcomes of the applications;
 - (4) outline the timeframes involved and the action to be taken in the first instance;
 - (5) undertake a preliminary investigation to determine what actions have already been taken to try to resolve the matter;

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- (6) keep the applicant informed of progress;
 - (7) ensure adequate records are maintained; and
 - (8) report to Council at prescribed intervals on all applications lodged for review.

6.3.3 All applications are to be referred to the IRCO immediately, including meeting with the applicant or transferring a telephone call when contact is first made. The IRCO will then indicate that an application for review must be lodged in writing.

6.4 Acknowledging an application for review

6.4.1 The IRCO is responsible for:

- (1) determining whether or not the decision is subject to review under this procedure;
- (2) working in conjunction with the appropriately delegated officer to determine how the review will be handled;
- (3) advising the applicant of the process to be undertaken, and the time of the next contact; and
- (4) ensuring the application is properly lodged and assigned.

6.4.2 Applications for a review of a decision must be responded to within [10] business days, acknowledging receipt and advising of the expected timeframe for dealing with the matter. Council will use its best endeavours to ensure a review of the original decision will be completed within [21] business days.

6.4.3 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. In more complex cases a review may take longer.

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

6.5 Applications for a review of the impact of rates or services charges

If 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.

7 Undertaking a Review

7.1 Assignment of applications for review

7.1.1 The elected Council will be the reviewer:

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- (1) when the decision being reviewed was made by a Committee of the Council or the CEO; or
 - (2) when the decision relates to civic and ceremonial matters; or
 - (3) in other circumstances as determined by the CEO or resolution of the Council.
- 7.1.2 Where the decision is a decision of the elected Council, the CEO will appoint an external person or body who will report the outcome of the review to the Council. Council will consider the outcome of the review and determine whether to affirm, vary or revoke the reviewed decision.
- 7.1.3 Where the elected Council is not the reviewer, a reviewer to suit the nature of the internal review to be undertaken will be selected from the following:
- (1) CEO or appropriate delegate;
 - (2) A panel comprised of Council and/or Committee Members and/or Senior Staff;
 - (3) An external person or body.
- 7.1.4 Whenever possible and appropriate, Council will seek to involve an external person or panel to assist with the review.

The reviewer must not have been involved in, or made the decision, which is the subject of the review.

7.2 Role of reviewer

- 7.2.1 The reviewer will undertake a merits review of the decision.
- 7.2.2 In carrying out a merits 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.

7.3 Review Process

- 7.3.1 When ensuring the decision-maker made the best decision available, the Reviewer should consider the following:
- (1) The decision must be within a power properly conferred on the decision-maker under the relevant Act.
 - (2) 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.
 - (3) A decision-maker must not make a decision or exercise a power or discretion in bad faith, or for an improper purpose.
 - (4) A decision-maker must ensure that findings of fact are based on evidence.

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- (5) Decisions must be reasonable.
 - (6) Those who may be affected by a decision must be accorded procedural fairness, which includes the principles of natural justice.
 - (7) A decision-maker must properly consider the application of existing policies.
 - (8) A decision-maker must not exercise a discretionary power at the direction of another person.

7.3.2 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.

7.4 Providing 'Procedural Fairness'

- 7.4.1 Council will observe the principles of procedural fairness (also called 'natural justice') when exercising its statutory powers, which could affect the rights and interests of individuals.
- 7.4.2 Procedural Fairness is provided by ensuring the following principles are observed:
 - (1) Giving an applicant a right to put their case forward. This will generally involve giving an applicant the opportunity to provide all relevant documentary evidence, be informed of the proposed outcome of the review, have the opportunity to make submissions to the review on the outcome, and have these submissions taken into account.
 - (2) Ensuring that the reviewer does not have a personal interest or bias (either perceived or actual) in the outcome , and
 - (3) Acting only on proper evidence that is capable of proving the case.

7.5 Giving Reasons

- 7.5.1 While there is no statutory requirement to give reasons for a decision, Council will always provide reasons to explain the outcome where:
 - (1) A decision is not in accordance with published policy;
 - (2) A decision is likely to detrimentally affect rights or interests of individuals (or organisations) in a material way; or
 - (3) Conditions are attached to any approval, consent, permit, licence, or other authorisation.

7.6 Refusing an application for review

- 7.6.1 A Council, or a person assigned to consider the application, may refuse to consider an application for review if:

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- (1) the application is made by an employee of the council and relates to an issue concerning his or her employment; or
 - (2) it appears that the application is frivolous or vexatious; or
 - (3) the applicant does not have a sufficient interest in the matter.

7.6.2 Where a matter has been referred to the Local Government Association Mutual Liability Scheme (LGAMLS) in respect to a claim or potential claim against the Council, or in response to a threat of legal action against the Council, an application for review of a decision in connection with that claim or action (including the decision to refer the matter to the LGAMLS), will be vexatious.

7.6.3 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.

7.7 Outcome of Review

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

7.7.2 Where the reviewer is a Council employee, the employee may determine whether to affirm, vary, or revoke the original decision, if authority to make the decision has been delegated to that employee. 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) for a determination as to whether the decision should be affirmed, varied, or revoked.

7.7.3 Where the reviewer is an external person or body, then the reviewer should report the outcome of the review to the elected Council 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.

8 Remedies

8.1 Where the review of a decision upholds the applicant's grievance, an appropriate remedy or response will be determined which is consistent and fair for both Council and applicant. The remedy chosen will be proportionate and appropriate to the failure identified.

8.2 As a general principle the applicant will, so far as possible, be put in the position he or she would have been in, had the decision not been made.

8.3 This may mean changing a decision. 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 an apology.

8.4 Other possible outcomes include one or a combination of the following:

8.4.1 an explanation

8.4.2 mediation (in accordance with Sec. 271 of the Local Government Act 1999);

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- 8.4.3 an admission of fault
 - 8.4.4 a change to policy, procedure or practice
 - 8.4.5 a correction of misleading records
 - 8.4.6 financial compensation, including a refund of any fees
 - 8.4.7 the waiving of a debt
 - 8.4.8 the remission of a penalty
 - 8.4.9 disciplinary action
 - 8.4.10 referral of a matter to an external agency (neutral evaluator) for further investigation or prosecution.
- 8.5 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.
- 8.6 Compensation will only be offered in cases where the loss or suffering is considered substantial. The Council itself, and the CEO, are the only people authorised to offer financial compensation, and this will only occur after consultation with the Local Government Association Mutual Liability Scheme.
- 8.7 When advising an applicant of the outcome of a review, information will also be provided about alternative remedies, including any rights of appeal, and the right to make a complaint to an external agency such as the SA Ombudsman.

9 Reporting

- 9.1 All applications will be recorded in Council's records management system in such a way that the information can also be analysed for service improvement opportunities.
- 9.2 The IRCO will submit a report to Council annually about section 270 applications for review of a decision, including:
- 9.2.1 the number of applications for review made under this section
 - 9.2.2 the kinds of matters to which the applications relate
 - 9.2.3 the outcomes of applications under this section.
- 9.3 The IRCO will also provide information on how the outcomes have been used to improve Council's customer service, policies, procedures, and practices.
- 9.4 This information, as specified in section 270(8), will be included in Council's Annual Report.

10 Records Management

All documents, notes, photographs and correspondence must be retained and stored in accordance with Council's Records Management Policy, as required by Section 125 of the Local Government Act.

All applications must be recorded in Council's records management system in such a way that the information can also be analysed for service improvement opportunities.

11 Policy Review

The Policy will be reviewed once per Council term or as required by legislation.

12 Access to the Policy

The Policy is available to the public:

www.prospect.sa.gov.au

Customer Services, Payinthe 128 Prospect Road, Prospect SA 5082.

13 Further Information

For further information about this policy please contact:

Principal Governance Advisor
City of Prospect
128 Prospect Road
Prospect SA 5082

8269 5355

admin@prospect.sa.gov.au

Request to Review a Decision Form

Local Government Act 1999 (SA) s 270

Part 3 – Additional information

This section requires further information to assist the **Internal Review Contact Officer (IRCO)** when assessing this application:

Additional Information

I am seeking the following resolution as a result of this review: *Please give sufficient details with additional pages attached if required. For example, you may wish for the **reviewable decision** to be reversed, altered or an alternative decision may be available.)*

Part 4 – Fee

This application must be accompanied by the prescribed fee, however you may request for Council to reduce, waive or refund (in whole or part). Please note, the paid fee does not guarantee the application's progression and any decision to waive the fee is required to be made by the Council (Elected Body). *Please tick the appropriate box below:*

I request the \$20 application fee be: ☐ Reduced ☐ Waived ☐ Refunded in whole ☐ Refunded by \$_____

Part 5 – Additional information for the Applicant

This section provides further information to the **Applicant** regarding what a review of a decision *may* achieve in accordance with legislation.

Additional Information for the Applicant:

In submitting this application, I understand that:

An application for review must be made within 6 months of the making of the decision, however Council may decide to progress this application if the decision was made more than 6 months ago on the basis of the information provided in this application.

An application for review must be accompanied by the \$20 fee, which does not guarantee progression, but can be requested to be reduced, waived or refunded (in whole or part) see **Part 4** above.

An application may be refused from proceeding on any one or more of the following;

- The application is made by an employee of council and relates to an issue concerning employment;
- It appears the application is frivolous or vexatious;
- The applicant does not have sufficient interest;
- The Council or person is satisfied that the subject-matter has been or is already the subject of review by the Council or an investigation, inquiry or review by another authority.

A new decision may be made or the **reviewable decision** may be affirmed or altered.

Further information is available on Council's website: [How to lodge a complaint compliment or feedback](#)

Signature _____

Date _____

Office use only

Received (date and time) EDRMS Number:

Date

Time

Acknowledged EDRMS Number:

Initial _____

Date

Approved by CEO and IRCO assigned EDRMS Number:

Yes ☐ No ☐

Date

Applicant notified: Yes ☐ No ☐ EDRMS Number:

In writing ☐ Verbally ☐

Date: