

## Internal review of council decisions (s270) procedure

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## 1 Administrative procedure purpose *Legislative obligation s270(1)*

The purpose of this procedure is to specifically address the manner in which requests for a review of a decision of council pursuant to section 270 of the Local Government Act 1999 will be dealt with. The aim is to ensure a fair, consistent and structured process for any party dissatisfied with a decision which has been made by the Council, its employees or persons acting on behalf of the council.

We are an organisation committed to being a Council of excellence; reviewing service efficiency, effectiveness and compliance with laws and becoming an actively learning organisation. The Chief Executive Officer and Directors have made this commitment explicit through our organisational values and guide the behaviours of all staff.

It is acknowledged that any legislative requirement which affects Council will take precedence over Council's policies and procedures.

## 2 Scope

This procedure applies to all council officers who may be involved in, or receive, an application for review of a council decision. It will apply when matters have not been able to be resolved satisfactorily and commences at the point where:

- a formal request for the review of a decision is received, or
- informal processes have not achieved an acceptable outcome and it is escalated to a Tier 3 complaint.

This procedure is designed to ensure that:

- an unbiased assessment is undertaken
- decisions are based on sound evidence
- each applicant receives information about the outcome of the review.

This procedure will not apply when an alternative statutory process for review exists particularly if the applicant is already using that process.

## Definitions

Alternative Dispute Resolution	means mediation, conciliation or neutral evaluation as set out in section 271 of the <i>Local Government Act 1999</i> .
Applicant	means the person lodging the request for review.
Business Day	means a day when the council is normally open for business, i.e. Monday to Friday, excluding public holidays.
Complainant	means the person lodging the request for review
Council	means the City of Onkaparinga
Decision	means a position adopted by Council or its employees. It will generally be reached after consideration of relevant information.
Decision-maker	means the individual or entity responsible for the decision under review.
Employee	means 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.
Frivolous	means a complaint which:

- cannot be successfully argued because it is based on inaccurate facts, an error in law or outdated practices, or
- has no reasonable prospect of success

Reviewer	means the individual or entity responsible for undertaking the review.
Trivial	means a complaint of little or no importance, where the Reviewer considers it unreasonable to dedicate resources to an investigation of the matter
Vexatious applicant	means Complainant who has consistently, over a period of time, complained about minor matters or the same matter, which have previously been dealt with and no new information has been provided by the applicant and/or is considered by the Reviewer to be mischievous, without sufficient grounds or serving only to cause annoyance or disrepute.

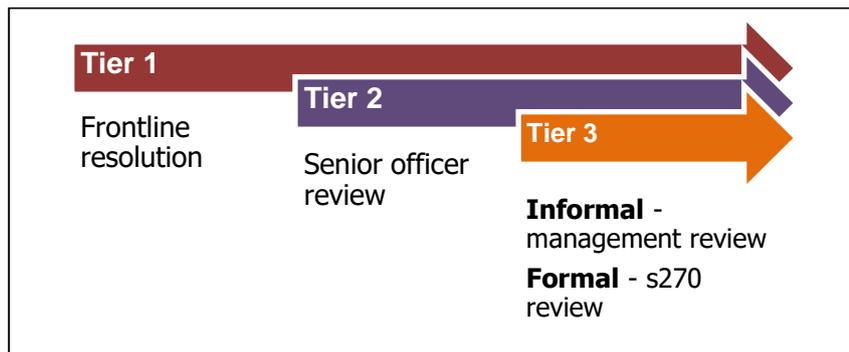
### 3 Key principles

Council will be guided by five policy principles which are fundamental to its complaint handling framework:

- **Fairness:** treating complainants fairly requires impartiality, confidentiality and transparency at all stages of the process
- **Accessibility:** to be accessible there must be broad public awareness about Council's policy and a range of contact options
- **Responsiveness:** this will be achieved by providing sufficient resources, well trained staff and review and improvement of the systems
- **Efficiency:** 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 complaint overlaps functional responsibilities.

### 4 Customer complaints

This procedure forms part of the council's Complaint handling procedure for employees. In summary, the council has a three-tier process for managing complaints.



***Tier 1 Immediate response to resolve the complaint (managed by frontline officers)***

All officers 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. Dealing with a complaint at this level can include referral to another officer, a Team Leader or a Manager.

***Tier 2 Complaint escalated to a more senior officer (managed by T/L or manager)***

A complaint will be directed to a more senior officer in the Council, where circumstances indicate that the complaint would be more appropriately handled at a higher level.

***Tier 3 Internal review of a Council decision*** (managed by Corporate Governance)  
Internal review of a Council decision will be in accordance with this procedure. This procedure enables 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.

## **5 Decisions subject to review**

Decisions of the council, employees of the council; and other persons acting on behalf of the council, may be subject to review under this procedure. The nature of this review is a merits review which could lead to the original decision being affirmed, varied or revoked. Not all actions by a council, employees of a Council or other person acting on behalf of a Council will be a decision. For example, actions taken during the process of decision-making (ie investigations, requests for further information, internal consideration of the matter or referral of the matter to an external adviser) are not decisions.

A decision is made when a matter, issue or query is actually determined. Once a matter, issue or query is determined, the decision may be susceptible to review in accordance with this procedure.

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.

### **5.1 Alternate procedures**

Some complaints may be more properly dealt with by another process for example:

- complaints against an **Elected Member** - refer to Director Corporate and City Services
- complaints against the **Chief Executive Officer** – refer to the Mayor who will follow the relevant procedures and seek guidance, if appropriate, from the Director Corporate and City Services
- external review processes under the *Freedom of Information Act 1991*
- Insurance claims - refer to Corporate Governance
- Decisions made under legislation such as the *Development Act 1993* have their own prescribed appeal procedures
- Objections to valuations made by a council - refer to Valuer-General office
- Appeals against orders made pursuant to section 254 of the *Local Government Act 1999*
- Appeals against the issuing of litter abatement notices under the *Local Nuisance and Litter Control Act 2016*
- Appeals against destruction and control orders issued under the *Dog and Cat Management Act 1995*

Where legislation specifically excludes a type of decision from review either expressly or by necessary implication, this procedure cannot operate inconsistently with that legislation. Similarly, a review under this procedure could not vary or revoke a decision which has operative effect under legislation from the time the decision is made. For example, some development approvals under the *Development Act* are intended to have operative effect from the time the decision is made and are not capable of being varied or revoked by council.

Where legislation specifically provides for an internal review process, that process will apply rather than the process set out in this procedure. For example, internal review of a determination under the *Freedom of Information Act* or withdrawal of an expiation notice issued by the Council under section 16 of the *Expiation of Offences Act*.

Notwithstanding the above, matters that fall outside statutory appeal procedures may be considered for review under section 270, based on the merits of the individual application.

Council prefers to work with its customers to resolve requests for review; however, an applicant retains the right to seek other forms of resolution, such as contacting the Ombudsman, the Office of Public Integrity or taking legal action. Note 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.

## **6 Operating procedure** *Legislative obligation s270(2), (3)*

### **6.1 Informal process under complaint handling**

Issues can arise about a range of matters during the course of council's day to day activities. Most complaints are initially made verbally by telephone or face-to-face to a council officer and some are made in writing. Elected Members may also receive complaints.

All complaints will be referred to the relevant council officer in the first instance (informal approach). Prompt action will generally result in the matter being resolved satisfactorily following normal departmental complaints procedures.

If the matter is not resolved then a formal application addressed to the Chief Executive Officer should be lodged in writing or by using the application form available on council's website.

### **6.2 Applying for a review**

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 for example, residents, ratepayers, members of a community group, users of council's facilities, and visitors to the area all have the right to lodge an application for review.

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.

This procedure does not negate an applicant's right to seek a review by the Ombudsman office, other legal appeal processes, or the Courts at any time during the complaint handling process.

There is no charge for making an application for review of a council decision.

### **6.3 Timeframe for lodging an application**

Applications for the review of a decision must be lodged within six months of the decision in question being made. The Chief Executive Officer may choose to exercise their discretion and agree to accept an application outside of this time limit.

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

*Legislative obligation 270(2)(ca),*

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 1999*.

The right of a council to recover rates is not suspended by an application for the provision of some form of relief or concession with respect to the payment of those rates (but a council may then, if appropriate in view of the outcome of the application, refund the whole or a part of any amount that has been paid).

*Legislative obligation s270 (9)*

### **6.5 Assisting with the application for review**

It is essential that no one is excluded from lodging an application for review because of any difficulties they may have representing themselves. All officers 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 or advocates will be offered to ensure that an applicant is treated equitably.

### **6.6 Internal Review Contact Officer**

An Internal Review Contact Officer (IRCO) will be assigned by the Chief Executive Officer from the Corporate Governance team to be the initial point of contact for applicants.

The IRCO will work in conjunction with an appropriately delegated officer to determine how the review will be handled.

The role of the IRCO is to:

- acknowledge receipt of an application within 5 business days and
- outline the timeframes involved and the action to be taken in the first instance
- seek further information as required

- undertake a preliminary assessment to determine what actions have already been taken to try to resolve the matter
- consider if any alternative options are available to resolve the matter
- keep the applicant informed of progress
- maintain a register of all applications for review received and the outcomes of the applications
- report to Council at prescribed intervals on applications lodged for review.

### **6.7 Internal review timeframes**

Council will use its best endeavours to ensure that a review of the original decision will be completed in a timely manner. For complex cases appropriate enquiries, assessment of the evidence, the drafting of a response and decision-making may several months to complete.

If the decision is to be reviewed by an external assessor, a Panel, the Council or a committee there may also be delays caused by meeting cycle timelines.

The applicant will be kept informed of progress in writing either by email or letter.

### **6.8 Council response to an application**

The IRCO is responsible for:

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

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, a Council committee or an external investigator reporting to the elected Council or council committee, there may be delays caused by meeting cycle timelines. In more complex cases, a review may take longer.

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

### **6.9 Refusing an application** *Legislative obligation s270(4)*

The Council is entitled under the *Local Government Act* to refuse to consider an application for review if:

- the application is made by an employee of the Council and relates to an issue concerning his or her employment or
- the decision was made greater than six months previously or
- it appears that the application is frivolous or vexatious or
- the applicant does not have a sufficient interest in the matter.

Refusing an application for review will not be done lightly and reasons for the refusal will be documented.

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 Undertaking a review**

Each internal review application received will be assessed to determine the appropriate referral for review. Matters may be referred by the Chief Executive Officer to the Council, a Director, a panel of Directors or for independent review or mediation.

At the conclusion of the process the applicant will be advised of the outcome and of any further action that may be taken or required. Applicants will also be advised of other options, if any, for review such as the Ombudsman, legal advice and or the court system.

### **7.1 Matters to be referred to Council** *Legislative obligation s270(2)(c)*

The elected Council will be the reviewer:

- when the decision being reviewed was made by a Council committee or the CEO
- when the decision relates to civic and ceremonial matters; and
- in other circumstances as determined by the CEO or resolution of the council.

Where the decision is a decision of the elected Council, the reviewer will be an external person or body who will report the outcome of the review to the Council. The Council will consider the outcome of the review and determine whether to affirm, vary or revoke the reviewed decision.

### **7.2 Matters to be dealt with by a Director, Panel or independent assessor**

In all other instances, a reviewer will be assigned by the Chief Executive Officer to determine the appropriate action including whether:

- any other specific statutory appeal mechanism exists
- an independent assessor or a Director or Panel review is appropriate.

### **7.3 Review of decision**

Where the elected Council is not the reviewer, a review methodology to suit the nature of the internal review will be undertaken with the support of the Corporate Governance Team. When appropriate, council will include a Director not associated with the issue or an external person to assist with the review.

All the information and material that was before the original decision-maker and any additional relevant information or material provided by the applicant will be considered in the review. In effect the Reviewer will 'stand in the shoes' of the original decision maker and determine the decision appropriate on the basis of the relevant circumstances and available information and materials..

The basis of an assessment/ investigation will be the processes and procedures followed in making the initial decision and the merit of the decision itself. This

means a Reviewer will also consider whether a different decision could have been more appropriate, based on the evidence.

Recommendations regarding whether the complaint should be upheld and what actions (if any) could be taken to resolve the situation will form part of any investigation.

#### **7.4 Providing 'procedural fairness'**

The Reviewer will observe the principles of procedural fairness (also called 'natural justice') when undertaking the review.

Procedural fairness involves:

- 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, rather than an oral hearing
- ensuring the Review does not have a personal interest in the outcome (ie. must not have a bias or perceived bias) and
- acting only on proper evidence that is capable of proving the complaint on the 'balance of probabilities'.

#### **7.5 Providing reasons**

While there is no statutory requirement to give reasons for a decision, council will, where practicable, provide reasons for the decision.

Council will always give reasons to explain the outcome where:

- a decision is not in accordance with published policy
- a decision is likely to detrimentally affect rights or interests of individuals (or organisations) in a material way or
- conditions are attached to any approval, consent, permit, licence or other authorisation.

#### **7.6 Outcome of review**

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

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.

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.

## 7.7 Remedies

The remedy or response may be one, or a combination of actions. The chosen remedy will be proportionate and appropriate 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.

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 Confidentiality

The identity of applicant(s) will be made known only to those who need to know in the process of investigating and seeking to resolve the matter. The complaint will not be revealed or made public by the council, except where required by law.

All documentation in relation to the investigation will remain confidential and will not be released to the applicant or any other party unless required by law.

## 9 Reporting

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

The following information about all applications for review will be recorded in a central register:

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

An information report will be submitted to Council annually through the ARVEC about section 270 applications received in each financial year.

The report may also contain information on how the outcomes have been used to improve council's customer service, policies, procedures and practices.

The information, as specified in section 270(8) of the *Local Government Act 1999*, will be included in Council's Annual Report.

## 10 Relevant legislation and references

*Local Government Act 1999*

*Complaint management framework* Ombudsman SA, March 2016

*Managing unreasonable conduct practice manual* Ombudsman NSW (*as amended from time to time*)

LGA Model Procedure review of a council decision (s270)

**11 Document control**

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<b>Position</b>		<b>Name</b>	
Team Leader Corporate Governance		Kathryn Brown	
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