

PROCEDURE – ADMINISTRATION

Internal review of council decisions (s270) procedure

Contents

1. Document control	2
2. Purpose <i>Legislative obligation s270(1)</i>	2
3. Scope.....	3
4. Definitions	3
5. Customer service principles.....	4
6. Decisions subject to review	4
7. Operating Procedure <i>Legislative obligation s270(2), (3)</i>	6
7.1 APPLYING FOR AN INTERNAL REVIEW	6
7.2 TIMEFRAME FOR LODGING AN APPLICATION	6
7.3 APPLICATIONS FOR A REVIEW OF THE IMPACT OF RATES OR SERVICES CHARGES.....	6
7.4 ASSISTING WITH THE APPLICATION FOR REVIEW	6
7.5 INTERNAL REVIEW CONTACT OFFICER.....	7
7.6 INTERNAL REVIEW TIMEFRAMES	7
7.7 COUNCIL RESPONSE TO AN APPLICATION.....	7
7.8 REFUSING AN APPLICATION.....	8
8. Undertaking a review.....	8
8.1 MATTERS TO BE REFERRED TO COUNCIL.....	8
8.2 MATTERS TO BE DEALT WITH BY A DIRECTOR, PANEL OR INDEPENDENT ASSESSOR.....	9
8.3 REVIEW OF DECISION	9
8.4 PROVIDING 'PROCEDURAL FAIRNESS'.....	9
8.5 PROVIDING REASONS.....	9
8.6 OUTCOME OF REVIEW	10
8.7 REMEDIES.....	10
9. Confidentiality.....	10
10. Reporting.....	10
11. Relevant legislation and references	11

be mischievous, without sufficient grounds or serving only to cause annoyance or disrepute.

5. Customer service principles

The following customer service principles are applied when managing customer feedback including complaints:

- **Fairness:** We will treat customers feedback and complaints impartiality, remain non-judgemental and equitable. Ensure actions remain confidential.
- **Accessibility:** Provide the public with a range of contact options and free of charge (except where legislative prescribed fees apply).
- **Responsiveness:** Your feedback or complaint will be dealt with promptly and courteously.
- **Efficiency:** Complaints resolved as quickly as possible, while ensuring that they are dealt with adequately.
- **Accountability:** Ensure that the information upon which we make decisions or base our actions is factually correct.

6. 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 and therefore this procedure will not be applicable. For example, actions taken during the process of decision-making (i.e. investigations, requests for further information, internal consideration of the matter or referral of the matter to an external adviser) are not decisions. These can be reviewed in accordance with council's Customer Feedback Procedure including a Tier 2 review or Tier 3 Management Review (refer 6.5 in the Customer Feedback Procedure).

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 as set out in legislation. This procedure cannot override or operate inconsistently with these statutory review/ appeal 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.

This procedure does not provide for reviews relating to:

- the refusal to deal with or the determination to take no further action in relation to complaint made under the LG Act about Elected Member behaviour, or
- decisions relating to a recommendation made by the Ombudsman

6.1 ALTERNATIVE PROCESSES

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 *Planning, Development and Infrastructure Act 2016* 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.

Alternative processes are detailed below:

Type	Process / Contact
Chief Executive Officer (CEO)	Refer to Mayor and managed under Chief Executive Officer Code of Conduct Complaint Handling Procedure
Contractor	Refer to the appropriate Manager responsible for the specific work being undertaken.
Decisions under legislation (not exhaustive list): <i>Freedom of Information Act 1991;</i> <i>Planning Development and Infrastructure Act 2016;</i> <i>Dog and Cat Management Act 1995;</i> <i>Environmental Protections Act 1993;</i> <i>Expiation of Offences Act 1996;</i> section 254 orders under s.256 of the <i>Local Government Act 1999;</i> and <i>Local Nuisance and Litter Control Act 2016</i>	Managed under each legislation's prescribed appeal process. NB- Freedom of Information applications may be referred to the Ombudsman for review.
Public Interest Disclosure Act 2018 (previous Whistleblower legislation)	Refer to council's Public Interest Disclosure Guidelines
Elected Members	Refer to Chief Executive Officer, Mayor or Director Corporate and managed under Procedure for Investigating Complaints under the Code of Conduct for Council Members
Insurance Claims	Contact insurance@onkaparinga.sa.gov.au and claims managed by Local Government Risk Services
Licensed Water Retail Operations	Refer to Licensed Water Retail Operations Enquiry, Complaint and Dispute Resolution Procedure
Objections to property valuations	Contact Valuer-General's Office

Volunteer

Refer to the Volunteer Management Business Partner and council's Managing Volunteer Performance and Behaviour Procedure.

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 at any time. 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.

7. Operating Procedure *Legislative obligation s270(2), (3)*

7.1 APPLYING FOR AN INTERNAL 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.

An application for review must be accompanied by the prescribed fee.

7.2 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 CEO may choose to exercise their discretion and agree to accept an application outside of this time limit.

7.3 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 LG Act.

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)

7.4 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.

The Inclusive Communities Action Plan 2021-2024 (ICAP) demonstrates our commitment to ensure people can access and take part in social, economic, recreational, and cultural activities within our region.

Access and inclusion are the process whereby every person, regardless of age, disability, gender, religion, sexual preference or ethnicity, who wishes to, can access, and take part in all aspects of an activity or service in the same way as any other member of the public.

It is important to us that no one is excluded because of any difficulties they may have representing themselves. Council officers can help where appropriate or on request, including assistance in providing feedback in writing if required.

7.5 INTERNAL REVIEW CONTACT OFFICER

An Internal Review Contact Officer (IRCO) will be assigned by the CEO 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.

7.6 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.

7.7 COUNCIL RESPONSE TO AN APPLICATION

The IRCO is responsible for:

- determining whether 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.

7.8 REFUSING AN APPLICATION

Legislative obligation s270(4)

The Council is entitled under the LG 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 or
- it is satisfied that the subject matter of the application has been or is already the subject of a review by council or an investigation, inquiry or review by another authority or

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

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

8. Undertaking a review

Each internal review application received will be assessed to determine the Appropriate referral for review. Matters may be referred by the CEO 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.

8.1 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.

8.2 MATTERS TO BE DEALT WITH BY A DIRECTOR, PANEL OR INDEPENDENT ASSESSOR

In all other instances, a reviewer will be assigned by the CEO 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.

8.3 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 based on 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.

8.4 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 Reviewer 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'

8.5 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.

8.6 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.

8.7 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 LGAMLS.

9. 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 or when a matter is referred to Council in accordance with paragraph 8.1 above.

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.

10. 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:

Appendix 1