

Policy Section:	1. Corporate Governance
Procedure Name:	Internal Review of a Council Decision
Classification	Mandatory Procedure
Adopted:	22 March 2016
Frequency of Review:	Biennial
Last Review:	August 2017
Next Review Due:	August 2019
Responsible Officer(s):	Governance Officer & Chief Executive Officer
Procedure Manual File Ref:	CC14/407
Council File Reference:	CR17/44321
Legislation Authority:	Local Government Act 1999 (the Act), S270
Related Policies:	Internal Review of a Council Decision Complaints Handling Requests for Service Ombudsman Enquiry and Investigation Management
Related Procedures:	Complaints Resolution Requests for Service

1. INTRODUCTION

- 1.1 This procedure specifically addresses the manner in which requests for a review of a previous decision of Council will be dealt with, and provides a fair, consistent and structured process for any party dissatisfied with a decision which has been made by Council or its agents.
- 1.2 Section 270 of the *Local Government Act 1999* requires Council to maintain “policies, practices and procedures” for dealing with requests for service and complaints including a procedure about “the review of decisions of —
- (a) the council;
 - (b) employees of the council;
 - (c) other persons acting on behalf of the council.”

The nature of this review is a procedural and merits review which could lead to the original decision being affirmed, varied or revoked.

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- 1.3 This procedure relates to Tier 3 of the three tier process for managing customer complaints:

Tier 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 a Council to reconsider all the evidence relied on to make a decision, including additional 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, 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.

- 1.4 This procedure for review of a decision commences at the point where:
- 1.4.1 A request for the review of a decision is received, or
 - 1.4.2 A complaint escalates to Tier 3 under Council's complaint handling policy.
- 1.5 The aim of this procedure, which is available on Council's website, is to ensure a fair, consistent and structured process for any party dissatisfied with a decision which has been made by Council or its agents.
- 1.6 This procedure applies to all Council staff who may be involved in receiving an application for review of a Council decision.

2. COUNCIL'S COMMITMENT

Council's procedures are designed to ensure that:

- 2.1 Every applicant has the opportunity to make an application for review of a decision covered by this procedure.
- 2.2 An unbiased assessment is undertaken.
- 2.3 Outcomes of a review are based on sound evidence.
- 2.4 Applicants receive information about the outcome of the review.

3. RECORDS MANAGEMENT

- 3.1 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*.
- 3.2 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.

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- 3.3 HPRM documents related to internal reviews of Council decisions that include personal and sensitive information will need to be given restricted access on an as needs basis.

4. INTERNAL REVIEW CONTACT OFFICER

- 4.1 An Internal Review Contact Officer (IRCO) appointed by the Chief Executive Officer is the initial point of contact for applicants.

- 4.2 The role of the Internal Review Contact Officer is to:

4.2.1 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.

4.2.2 acknowledge the receipt of the application for review

4.2.3 maintain a register of all applications for review received and the outcomes of the applications

4.2.4 outline the timeframes involved and the action to be taken in the first instance

4.2.5 undertake a preliminary investigation to determine what actions have already been taken to try to resolve the matter

4.2.6 keep the applicant informed of progress

4.2.7 ensure adequate records are maintained

4.2.8 report to Council at prescribed intervals on all applications lodged for review

- 4.3 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.

- 4.4 A person seeking review of a Council decision who attends at the Council's offices personally or by telephone call should be referred to the IRCO. The IRCO will discuss this procedure with the person and indicate that an application for review must be lodged in writing.

5. ACKNOWLEDGING AN APPLICATION FOR REVIEW

- 5.1 The IRCO (Town of Gawler Governance) is responsible for:

5.1.1 Determining whether or not the decision is subject to review under this procedure.

5.1.2 Working in conjunction with the appropriately delegated officer to determine how the review will be handled.

5.1.3 Advising the applicant of the process to be undertaken and the time of the next contact.

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5.1.4 Ensuring the application is properly lodged and assigned.

5.2 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 that a review of the original 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.

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

6. REVIEW PROCESS

6.1 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.

6.2 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 additional evidence that may come to light.

7. PROVIDING 'PROCEDURAL FAIRNESS'

7.1 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.

7.2 Put simply, 'procedural fairness' involves:

7.2.1 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, rather than an oral hearing.

7.2.2 Ensuring that the reviewer does not have a personal interest in the outcome (is not biased).

7.2.3 Acting only on proper evidence that is capable of proving the case.

8. GIVING REASONS

8.1 While there is no statutory requirement to give reasons for a decision, Council will provide reasons to explain the outcome where:

8.1.1 A decision is not in accordance with a Council policy;

8.1.2 A decision is likely to detrimentally affect rights or interests of individuals (or organisations) in a material way; or

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- 8.1.3 Conditions are attached to any approval, consent, permit, licence or other authorisation.

9. REMEDIES

- 9.1 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.
- 9.2 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. 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.
- 9.3 The range of other possible outcomes includes:
 - 9.3.1 an explanation.
 - 9.3.2 Mediation.
 - 9.3.3 An admission of fault.
 - 9.3.4 A change to policy, procedure or practice.
 - 9.3.5 A correction of misleading records.
 - 9.3.6 Financial compensation, including a refund of any fees.
 - 9.3.7 The waiving of a debt.
 - 9.3.8 The remission of a penalty.
 - 9.3.9 Disciplinary action.
 - 9.3.10 Referral of a matter to an external agency for further investigation or prosecution.
- 9.4 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.
- 9.5 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.
- 9.6 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.
- 9.7 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.

10. REPORTING

- 10.1 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.

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- 10.2 The IRCO records the following information about all applications for review:
 - 10.2.1 the number of applications for review made
 - 10.2.2 the kinds of matters to which the applications relate
 - 10.2.3 the outcome of applications
 - 10.2.4 such other matters as may be prescribed by the regulations.
- 10.3 This information, as specified in section 270(8), will be included in Council's Annual Report.
 - 10.3.1 the number of applications for review made under this section;
 - 10.3.2 the kinds of matters to which the applications relate;
 - 10.3.3 the outcomes of applications under this section; and
 - 10.3.4 information on how the outcomes have been used to improve Council's customer service, policies, procedures and practices.

11. REVIEW AND EVALUATION

The effectiveness of this Procedure will be reviewed on a biennial basis to ensure that its commitment to the principles of good conduct and standards is being achieved.

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