

Internal Review of Council Decisions Policy



Record number	D19/54781
Responsible Manager	Manager Governance & Policy Manager Customer & Communications
Other key internal stakeholders	Director Organisational Services & Excellence
Last reviewed	10 March 2020
Adoption reference	Council
Resolution number	373
Previous review dates	28/02/17, 10/12/13, 09/08/11, 09/10/07, 13/03/07, 25/02/03, 13/03/01
Legal requirement	There is a legal requirement for Council to develop and maintain policies, practices and procedures for the review of Council decisions and requests for services.
Due date next review	2023

The electronic version of this document is the controlled version. Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the current version.

PURPOSE

The purpose of this policy is to provide guidelines for how Council will deal with formal requests for internal reviews of Council decisions (including decisions by its employees and other people acting on behalf of Council).

The City of Tea Tree Gully recognises the importance of transparency in Council decision-making and the need to provide a fair, objective and consistent process for the review of Council decisions.

POLICY

Council (including Committees, employees of the Council and people acting on behalf of Council) make decisions every day which impact on members of the community. It is imperative that these decisions are fair, objective and subject to review.

An internal review of a Council decision is available under section 270 of the Local Government Act 1999. This is a process established by legislation that enables a Council to reconsider the decision making process and all the evidence relied on to make a decision, including new evidence if relevant. Requests for a review of a Council decision will apply to decisions made by the Council including Committees, employees of the Council or other persons acting on behalf of the Council. The aim of this policy is to ensure a fair, consistent and structured process for any party dissatisfied with a Council decision. This policy does not and is not intended to exclude other rights and remedies available at law.

An internal review of a Council decision will examine the correctness of the procedures followed in making the decision and may also examine the merits of the decision itself.

Council also has processes in place for dealing with customer complaints and requests for services. As a general rule, Council will encourage the use of these policies and procedures in the first instance as they offer the potential for more immediate informal resolution. Complaints about the actions of the Council, employees of the Council, or other persons acting on behalf of the Council will attempt to be resolved via Council's General Complaints Policy.

Reasonable requests for the provision of a service by the Council or for the improvement of a service provided by the Council are dealt with under Council's Requests for Services Policy.

The formal internal review of a Council decision 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. While Council encourages the use of other resolution mechanisms, it is an applicant's right to use the formal internal review process in the first instance if that is their preference.

Pursuant to section 270(7) of the Act, a formal request for review does not prevent a complaint being made to the Ombudsman at any time. However 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.

Matters outside the scope of the Policy and Procedures

Some Council decisions fall outside the scope of this policy as alternative statutory process for a review or appeal may exist in other legislation. Examples of other legislation containing unique statutory processes include:

1. Development Act 1993 and appeals to the Environment, Resources and Development Court
2. Freedom of Information Act 1991
3. Ombudsman Act 1972
4. The Act in respect to a section 255 Order to the Environment, Resources and Development Court
5. Expiation of Offences Act 1996. Although there is no external procedure, a review of a decision relating to the issue of an expiation notice must be undertaken in accordance with this Act by a properly delegated officer
6. Control Order under the Dog and Cat Management Act 1995
7. A section 92 notice under the South Australian Public Health Act 2011.

Applicants wanting a review of a Council decision should check if any other statute applies to their matter before proceeding with an application. However, matters that fall outside the statutory appeals procedures in these pieces of legislation will be considered for the conduct of a section 270 review on a case-by-case basis, depending on the merits of the individual application.

The purpose of this policy is to fill the gaps in the law where a complainant has no right of review of a decision made by Council.

Procedures

The following process will apply to any request for a review of a decision of Council:

Making an application

The review of a Council decision commences at the point where a formal request for a review of a Council decision is received.

1. A formal request for a review of a decision must:
 - a. Be in writing, ideally using the Internal Review of Council Decisions Application (available on Council's website)
 - b. Be addressed to the CEO (or in the case where the matter is about a decision made by the CEO, the matter will be referred to a Director)
 - c. Provide full details of the decision for which the applicant is seeking a review (including how the decision impacts on their rights and/or interests) and set out the reasons for applying for the review
 - d. Be lodged within six (6) months of the original decision being made (with discretion provided to the CEO to allow a longer time limit to apply in particular cases. This will be assessed on a case-by-case basis)
2. There is no fee payable for a review of a Council decision
3. A decision that has already been reviewed under section 270 will not be subject to further review unless determined by the CEO on a case by case basis.

Acknowledging an application

1. The CEO will formally acknowledge in writing all requests for a review of a Council decision within five (5) working days of receiving the request and advise the applicant of the expected timeframe within which a determination will be made in respect of their request for review.
2. It is essential that no one is excluded from lodging an application for review because of any difficulties they may have in representing themselves. Council staff are expected to offer assistance where appropriate and provide it on request, including assistance in documenting the reasons for applying for the review in writing. Where necessary, access should be provided to interpreters, aids or advocates to assist applicants.
3. The CEO will consider all requests for a review and may refuse to assess such an application if, pursuant to section 270(4) of the Act:
 - a. The request is made by an employee of the Council and relates to an issue concerning the employee's employment
 - b. It appears that the request is frivolous or vexatious
 - c. The applicant does not have a sufficient interest in the matter – this will be determined on a case-by-case basis.

Undertaking the review

1. Applicants will be treated equally, in accordance with good administrative practice. Council's procedures are designed to ensure that:
 - a. Every applicant has the opportunity to make an application for review of a decision covered by this procedure
 - b. An unbiased assessment is undertaken
 - c. Reviews will be completed as quickly as possible, while ensuring that they are dealt with at a level of authority that reflects their level of complexity
 - d. Decisions are based on sound evidence
 - e. Applicants receive information about the outcome of the review
 - f. Applicants will be afforded procedural fairness.
2. The CEO will assess all applicable requests for a review of a Council decision (except those which will be referred directly to the Council or a Committee of Council) and determine what action, if any, should be taken (including whether an independent investigation is necessary).
3. Except where a decision has already been implemented and cannot be revoked, a merits review may be conducted. In those instances where a merit review will not be conducted, a process review may be undertaken and the applicant will be advised of this.
4. The CEO may elect to appoint another officer or external advisor for assessment and/or preparation of a report to assist in the review process. The person appointed to assist with the review must be independent of the original decision (i.e. have no prior involvement in the matter). An external advisor may be recommended where the decision under review is complex and raises legal questions.
5. The CEO will refer a review of a Council decision directly to Council where the decision being reviewed was made by the Council or a Committee.
6. A review of decisions made by the CEO will be referred to a Director.
7. The CEO may decide to refer a review of a Council decision directly to Council where:
 - a. The decision being reviewed relates to civic or ceremonial matters
 - b. The decision being reviewed is in the opinion of the CEO likely to be of interest to the wider community
 - c. Any other matters at the discretion of the CEO.

8. Where a review of a Council decision is referred to the Council, the CEO will prepare a report to Council which will include all of the relevant information about the decision being reviewed
9. Where a request for review has been referred to Council the applicant will be advised of the date that the report will be presented to Council and will be given the opportunity to provide a written or verbal submission in relation to the report for Council's consideration
10. In most cases, Council will use its best endeavours to ensure that requests for review will be considered and determined within 20 business days. However, in more complex cases, or if the decision is to be reviewed by Council, Committee or an external provider a review may take longer. In the event that a review exceeds 20 days, the applicant will be provided with periodic updates on the progress of the review until the review is finalised.

Procedural Fairness

1. Those that may be affected by a decision must be accorded procedural fairness, which includes the principles of natural justice. As part of the review process all parties with an interest in the matter will have the opportunity to make a written submission expressing their point of view and responding to issues raised, including the provision of any relevant information.
2. In undertaking a review, the CEO or Council will review the decision in question to ensure that the original decision maker complied with the following procedural requirements and made the best possible decision in the circumstances having regard to the following:
 - a. The decision maker had the power to make the decision
 - b. The decision maker considered all matters which were relevant to the making of the decision and did not take into account matters which were not relevant, as well as any additional relevant information or material provided by the applicant.
 - c. The decision maker did not exercise a discretion or power in bad faith or for an improper purpose, or while subject to duress or the influence of another person
 - d. The decision maker had no conflict of interest, bias or perceived bias
 - e. The decision maker ensured that findings of fact were based on evidence
 - f. The decision was reasonable
 - g. The decision maker considered any relevant legislation, policies or procedures.
 - h. The decision maker did not exercise a discretionary power at the discretion of another person
3. The details of any request for review will be kept confidential in so far as it is practicable. When no longer practicable, the applicant will be advised. Where a request for review is referred to the Council for determination, the Council may consider the matter in confidence where it is lawful and appropriate to do so, subject to one of the grounds under section 90(3) of the Act being satisfied
4. The applicant will be informed in writing of the outcome of the review (even where a determination is made that the original decision under review is upheld)
5. Adequate reasons need to be recorded for all internal review determinations
6. Where appropriate, the findings of the internal review be considered in regard to how Council's existing practices can be improved
7. The CEO will implement and maintain an internal procedure to ensure this policy is complied with.

Applications under this policy relating to Rates

Council is aware of its obligations under section 270 of the Act, accordingly, as part of the internal review process in these instances, Council or the CEO will consider the impact of rates levied on ratepayers and the provisions available to ratepayers for rate relief or concessions as set out in the Act (eg. remission or postponement of payment, issuing of fines and interest, particular land use categorisation)

Council cannot review its decision relating to the declaration of rates.

Remedies

Where the review of a decision upholds the applicants grievance, an appropriate remedy of response will be determined that is consistent and fair for both the applicant and the Council. The remedy chosen will be proportionate and appropriate to the outcome of the review and may be included (but is no limited to) such things as:

1. Varying the original decision
2. Returning the situation to its original status (such as not pursuing the construction of something, not implementing the original decision etc)
3. An explanation
4. Mediation
5. An apology or admission of fault
6. A change to Council policy, procedure or practice
7. A correction of Council records

Where appropriate, the findings of the internal review will be considered in regard to how Council's existing practices can be improved.

Alternative Options

Where all options for investigating a complaint have been followed and the complainant is still dissatisfied, they may choose to refer the matter to the Ombudsman. A complaint may be lodged with the Ombudsman at any time, including if the applicant is still dissatisfied with the outcome of an internal review.

Matters regarding Competitive Neutrality Pricing should be referred to the Australian Competition and Consumer Commission (ACCC). The ACCC is an independent Statutory Authority appointed under the Government Business Enterprise (Competition) Act 1996.

Reporting on Reviews

A register will be maintained of all requests for internal review received and the outcome of the applications.

In accordance with section 270(8) of the Act, Council will also provide a report in each annual report on:

- The number of applications for review made under this section
- The kinds of matters to which the applications relate
- The outcome of applications under this section
- Such other matters as may be prescribed by the regulations.

Council in the first instance, unless this is not appropriate in the circumstances.

LEGISLATIVE FRAMEWORK

There is a legal requirement for Council to develop and maintain policies, practices and procedures for the review of Council decisions and requests for services.

The following legislation applies to this policy:

[Local Government Act 1999](#)

Section 270(1) states that a council must establish procedures for the review of decisions of:

- The council;
- Employees of the council;
- Other persons acting on behalf of the council.

Section 270(2) states that the procedures must address at least the following matters:

- Manner in which an application for a review may be made
- Assignment of a suitable person to reconsider a decision under a review
- Matters that must be referred to the council itself for consideration or further consideration
- Notification of the progress and outcome of an application for a review
- Timeframes within which notifications will be made and procedures on a review will be completed
- In the case of applications relating to the impact that any declaration of rates or service charges may have had on ratepayers, to ensure that these applications can be dealt with promptly and, if appropriate, addressed through the provisions of relief or concessions under the Act.

Other references

Council's document including:

- [General Complaints Policy](#)
- [Requests for Services Policy](#)
- [Fees and Charges Register](#)
- [Internal Review of Council Decisions Application](#) (Form)

External document including:

- Ombudsman SA Final Report to Minister of Local Government – section 270 internal review audit

This policy is based on a model policy and procedure developed by the Local Government Association.

STRATEGIC PLAN/POLICY

Strategic Plan

Theme	Objective	Comments
HEALTHY AND SAFE	<i>A community where people are safe in our public places and spaces.</i>	
	<i>A community where people are safe during emergencies, natural disasters and during extreme climatic events, such as storms or heatwaves.</i>	
	<i>A community where people have easy access to places, spaces and services that support good health.</i>	
PROSPEROUS AND CONNECTED	<i>A community that has a say in decisions that affect them.</i>	
	<i>A community that participates in meaningful community and economic activities.</i>	
	<i>A community with a resilient local economy.</i>	
VIBRANT AND LIVEABLE	<i>A community where people have the resources and capacity to achieve goals.</i>	
	<i>A city that is made up of places and spaces that are appealing and easy to access.</i>	
	<i>A community with a diverse range of housing to suit a variety of needs, life stages and lifestyles.</i>	
	<i>A sustainable city that has a healthy natural environment and is resilient to climate change.</i>	
	<i>A place that expresses a unique character and identity, an area that inspires pride in its residents and one that people enjoy visiting.</i>	

Organisation Plan

Our Strategic Plan is supported by an Organisation Plan which focuses on five key themes of organisational excellence. Relevant themes include; “Governance” which deals with how Council defines roles, powers and responsibilities within the organisation with the aim of modelling best practice in local government; “Customer and community relations” allows the customer to request a merit and process review of a decision relevant to their issue; and “Continuous improvement” allows for processes identified as part of the review to be improved.

DEFINITIONS

For the purposes of this policy the following definitions apply:

Act

Local Government Act 1999.

Decision of Council

A formal decision of Council or Council Committee, a decision of an employee of Council made under delegation or decisions of other people acting on behalf of Council.

CEO

Refers to the Chief Executive Officer (including their delegate) of the City of Tea Tree Gully.

The applicant

A person who lodges a request for the review of a decision.

POLICY IMPLEMENTATION

This Policy will be implemented by the Chief Executive Officer or relevant portfolio director and managed in accordance with Council's scheme of delegations.

ACCESSIBILITY

This Policy and Council's Fees and Charges Register are available to be downloaded free of charge from Council's website: www.cttg.sa.gov.au

Hard copies, for a fee, can be provided in accordance with Council's Fees and Charges Register at Council's Civic Centre at 571 Montague Road, Modbury SA 5092.