

Internal Review of Council Decisions (s270)

1. Purpose

The aim of this policy is to provide a fair, consistent and structured process for Council's customers if they are dissatisfied with a Council decision or service.

2. Scope

General complaints will be managed in accordance with Council's Customer Feedback and Complaints Policy. The Internal Review of Council Decisions Policy will apply to all applications for review of decisions of Council, its employees or other persons acting on behalf of Council, except where other statutory processes are available to the applicant including but not limited to:

- *Electoral Act 1985* and under the *Local Government (Elections) Act 1999*
- *Environment Protection Act 1993*
- *Local Nuisance and Litter Control Act 2016*
- Industrial Relations matters
- Orders under the Act (section 254)
- Council By-Laws
- Code of Conduct issues
- Conflict of Interest matters
- Decisions made under legislative delegations (e.g. *Food Act 2001*, *SA Public Health Act 2011*)
- Commonwealth Home Support Program matters.

In addition, some decisions made by Council are subject to review or appeal processes set out in other legislation. These include:

- *Planning, Development and Infrastructure Act 2016*
- *Dog and Cat Management Act 1995*
- *Freedom of Information Act 1991*
- *Expiation of Offences Act 1996*.

3. Roles and Responsibilities

Chief Executive Officer	Ensure the Internal Review of a Council Decision Procedure is implemented in accordance with section 270 of the <i>Local Government Act 1999</i> and subject to periodic evaluation and review. Determine who will be the reviewer for a request for an internal review of a Council decision application.
Manager Strategy & Governance	Undertake the role of Council's Internal Review Contact Officer. Receive, acknowledge, and manage the process regarding Internal Review of a Council Decision applications.

4. Policy Statement

Section 270 of the *Local Government Act 1999* (the Act) requires Council to establish procedures for the review of decisions of the Council, employees of the Council, and other persons acting on behalf of the Council (such as contractors).

Applicants

- 4.1. Any person who is affected by the decisions made by Council, its employees or other persons acting on behalf of Council, may lodge an application for an internal review of that decision.

Applicant Process

- 4.2. Applications are to be made in the RMS system and include:
- a statement clearly indicating that the applicant wishes to have a decision reviewed under section 270 of the *Local Government Act 1999*
 - detail of the decision to be reviewed
 - a statement outlining the reasons for requesting a review
 - any other relevant information.
- 4.3. Applications should be made within 6 months of the most recent Council decision on a matter, however this timeframe may be extended by the Chief Executive Officer (or nominee) on a case by case basis depending on the review merit.

Application should be addressed to (hand delivered, posted or emailed to mail@holdfast.sa.gov.au):
Chief Executive Officer
City of Holdfast Bay
PO Box 19
BRIGHTON SA 5048

Applications should also include a fee of \$20.00 (prescribed under legislation).

- 4.4. The Chief Executive Officer may 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 application is frivolous (lacks substance or merit) or vexatious (made to harass, annoy, delay or cause detriment to the Council or a third party e.g. false allegations, absence of reasonable grounds) or
 - the applicant does not have a sufficient interest in the matter.

Refusing an application will not be done lightly and reasons for the refusal will be provided to the applicant.

- 4.5. Complaints regarding council activities can be made verbally to the relevant Actioning Officer (informal). However, should the resolution not be satisfactory, a written application is necessary for the formal complaint procedures to be maintained and addressed.
- 4.6. Anonymous applications may not be investigated but they must be registered into the RMS system. However, this depends on the nature, details and severity of the application.

Applicant Process

- 4.7. The Chief Executive Officer will provide to an appropriate Actioning Officer who will acknowledge the applicant's request and be responsible for dealing with the application for review.
- 4.8. The Actioning Officer will not include any employee or contractor who has a personal relationship with the applicant, a personal interest in the outcome of the matter, or previously been involved in the decision which is the subject of the review.
- 4.9. The role of the Actioning Officer is to:
- explain the procedure to the applicant and advise them of alternative courses of action available if applicable
 - undertake a preliminary investigation 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
 - assess the application and determine the appropriate action
 - arrange an independent review if necessary
 - advise the applicant of the expected timeframe for dealing with the matter and the action to be taken in the first instance
 - keep the applicant informed of progress or changes in timeframe
 - ensure adequate records are maintained in the RMS system
- 4.10. Some decisions will be referred directly to a Council meeting for review by the elected body such as decisions formally made by Council (i.e. by Council resolution), Council Committee decisions, Chief Executive Officer decisions, budgetary matters, scope of service delivery matters, or civic and ceremonial matters, requests for alteration to a formal Council Policy or any other matters at the discretion of the Chief Executive Officer.
- 4.11. Where the decision is a decision of the elected Council, the Actioning Officer will report the outcome of the review to the Council. The Council will consider the outcome of the review and determine whether to affirm (uphold), vary or revoke the reviewed decision.
- 4.12. If applications for review relate to the impact that any declaration of rates or service charges may have had on ratepayers, such applications will be dealt with promptly and, if appropriate, addressed through the provision of relief or concessions under the Act
- 4.13. When undertaking the review, the Actioning Officer's role is to review the decision in question and ensure that the original decision-maker complied with the following procedural requirements and made an appropriate decision:
- the decision must be within a power properly conferred on the decision-maker under the relevant legislation
 - a decision-maker must consider all matters which are relevant and not take into account matters which are not relevant
 - a decision-maker must not make a decision or exercise a power or discretion in bad faith or for an improper purpose
 - a decision-maker must ensure that findings of fact are based on evidence
 - a decision must be reasonable
 - those who may be affected by a decision must be accorded procedural fairness
 - a decision-maker must properly consider the application of existing policies
 - a decision-maker must not exercise a discretionary power at the direction of another person.
- 4.14. In carrying out a review of a decision, the Actioning Officer 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, and make the best decision available on the evidence available.

- 4.15. The Actioning Officer, in addition to considering whether the decision is legally and procedurally correct, will also consider whether a different decision would be better, based on the evidence. The merits review process, will involve a review of the facts that support a decision, including any new evidence available.
- 4.16. Where the Actioning Officer's role is only to prepare the matter for Council's review, the Actioning Officer must reference the procedural requirements in clause 2.3.6 when preparing reports for Council's consideration.
- 4.17. Where a review may result in a professional indemnity or other claim against Council, an Elected Member or employee, the Chief Executive Officer (or nominee) will provide the Local Government Association Mutual Liability Scheme with summary information about the review within 30 days of the conclusion of the matter.

Procedural Fairness

- 4.18. The principles of natural justice will be observed in dealing with all applications.
- 4.19. Council will observe the following principles of procedural fairness when exercising its statutory powers, which could affect the rights and interests of individuals by:
- giving an applicant a right to put their case forward, by giving an applicant the opportunity to provide all relevant documentary evidence rather than an oral hearing
 - ensuring that the Actioning Officer does not have a personal interest in the outcome (must not have a bias or perceived bias)
 - acting only on proper evidence that is capable of proving the case on the balance of probabilities.

Record Keeping

- 4.20. Employees and contractors will keep clear and accurate records of interviews and review actions.
- 4.21. Documentation will be kept safe and secure, and only relevant parties with a genuine interest will have access to the records.
- 4.22. A register of all applications for review will be maintained.

Reporting

- 4.23. A report will be prepared for Council on an annual basis, detailing the applications received in the previous year in accordance with section 270(8) of the Act. This information will also be included in Council's Annual Report in accordance with the Local Government (General) Regulations 2013, regulation 35, Schedule 4 (2).

Review of Timeframe

- 4.24. An application for review of a Council decision will be acknowledged by the Contact Officer within 5 clear working days of receipt of the application, including an advice to applicants about an estimated timeframe for dealing with the application.
- 4.25. In most cases, applications for review will be considered within 28 days or in a timely manner for complex reviews (where appropriate enquiries, assessment of the evidence, drafting of a response and decision-making may take several months to complete).
- 4.26. Applicants will be kept informed by the Actioning Officer about the progress of the review either by email, telephone or letter and advised in writing of the outcome of the review process.

Outcome of Review

- 4.27. Where the review of a decision upholds the applicant's grievance (decision is overturned or varied), a remedy or response will be determined which is consistent and fair for both Council and the applicant. The applicant will be advised accordingly.
- 4.28. The remedy chosen will be proportionate and appropriate to the failure identified and may include, but is not limited to:
- returning the situation to its original status
 - an explanation
 - an apology or admission of fault
 - a change to policy, procedure or practice
 - a correction to Council records
 - financial compensation or the waiving of a debt
 - the remission of a penalty or remedial action
 - disciplinary action
 - referral of a matter to an external agency for investigation or prosecution.
- 4.29. Any action required will be undertaken promptly, and consideration given to whether changes are required to prevent the situation being repeated.
- 4.30. Where the outcome of the review is to affirm (uphold) the decision the applicant will be notified accordingly. Council will consider if there are any opportunities for business improvement.

Outcome of Review

- 4.31. Applicants may seek external review through the SA Ombudsman, other legal appeal processes, or the Courts at any time during the internal review process. When advising an applicant of the outcome of a review, applicants will be advised of other options for review, any rights of appeal and the right to make a complaint to an external agency such as Ombudsman SA.

Confidentiality

- 4.32. The information and identity of an applicant shall not be revealed or made public. An applicant's information will be kept solely by the parties responsible for addressing an applicant's complaint except when required by law.

5. Definitions

Key term or acronym	Definition
Alternative Dispute Resolution	Includes mediation, conciliation or neutral evaluation as defined in Section 271 of the <i>Local Government Act</i> .
Applicant	The party lodging the request for internal review. Examples include residents, ratepayers, members of a community group, users of Council facilities and visitors to the Council area.
Decision	A position adopted by Council or its delegate after consideration of relevant information.
Decision- maker	Council or delegate responsible for the decision under internal review.
Delegate	A person or committee who has been given power by the Elected Body in an Instrument of Delegation to make a decision on behalf of the Elected Body.

Request Management System	(RMS). An automated system used to manage the creation and management of physical and electronic documents and records, improving work-flow, and providing evidence of business activities.
Elected Body	The Mayor and Elected Members meeting in their decision-making capacity.
Employee	Includes a person employed directly by Council in a full time, part time or casual capacity (whether that position is permanent, voluntary or contractual) and an authorised person who has been appointed subject to legislation.
External Review	A merits and/or process review by a person or an entity outside of The Barossa Council, eg the Ombudsman, of a decision that was made by the Elected Body or its delegate.
Internal Review	A merits and/or process review undertaken by a person or entity that is part of The Barossa Council or an independent reviewer, of a decision that was made by the Elected Body or its delegate.
Internal Review Contact Officer	The initial point of contact for applicants seeking an internal review.
Merits Review	A process by which a person or body, other than the primary decision maker, reconsiders the facts, law and policy aspects of the original decision and determines the correct or preferable decision.
Process Review	A review of the correctness of the processes followed in making a decision.
Procedural Fairness	Is concerned with the procedures used by a decision-maker, rather than the actual outcome reached. It requires a fair and proper procedure be used when making a decision and due regard to a fair approach to those involved/impacted by a decision. The rules of procedural fairness require: <ul style="list-style-type: none"> • a hearing appropriate to the circumstances • lack of bias • evidence to support a decision • inquiry into matters in dispute.
Reviewer	The delegate responsible for conducting a review of a Council decision.

6. Administration Use Only

Reference Number:	Document Set ID: 4848740
Strategic Alignment:	Our Holdfast 2050+
Strategic Risk:	Poor or ineffective management of legislative and regulatory obligations and ongoing changes
Responsible Officer(s):	General Manager Strategy & Corporate Manager Strategy & Governance
First Issued / Approved:	27/06/2017, 12/11/2019
Minutes Date and Council Resolution Number:	C121119/1670
Last Reviewed:	26/09/24 approved by SLT in the new template
Next Review Date:	26/09/27
Applicable Legislation:	Section 270 of the <i>Local Government Act 1999</i> Local Government (General) Regulations 2013
Related Policies:	Customer Feedback and Complaints Policy
Other Reference Documents:	Customer Feedback and Complaints Procedure