

PROCEDURE FOR INTERNAL REVIEW OF A COUNCIL DECISION

Procedure Type:	Council Procedure
Responsible Department:	Office of the CEO
Responsible Officer:	Group Manager Governance & Risk
Related Policies and Procedures	Requests for services, compliments and complaints policy. Complaints handling procedure under Council Members' Code of Conduct
Date Adopted:	25 June 2007
Last Council review:	27 March 2017
Next review date:	March 2020
ECM Doc Set ID:	1731990

1. INTRODUCTION

- 1.1 The City of Unley recognises the importance of transparency in Council decision-making and the need to provide a fair, objective and consistent process for the internal review of Council decisions.
- 1.2 The procedure is mandatory under section 270(1) of the *Local Government Act 1999*.

2. COMMUNITY GOAL

- O5.2 A customer-centric approach;
- O5.3 Good governance and legislative framework.

3. POLICY OBJECTIVES

- 3.1 The primary objectives of the Procedure for Internal Review of a Council Decision are to:
 - (i) satisfy the mandatory requirements of Section 270(1) of the Local Government Act 1999;
 - (ii) provide a fair, objective, and consistent procedure for the review of decisions of the Council, employees of the council, and other persons acting on behalf of the council;

- (iii) Where appropriate, use information obtained during the review to improve council decision making processes and service delivery.

4. PRINCIPLES

- 4.1 The review will examine the process by which the original decision was made, not the decision itself. However, the review may or may not result in the disputed decision being reconsidered and overturned.
- 4.2 The internal review process will aim for procedural fairness to ensure that all parties have the opportunity to express their point of view in relation to the decision under review, provide relevant information, and respond to issues raised.
- 4.3 All reasonable attempts will be made to review a decision quickly and efficiently without the need for a formal application for internal review to be lodged.

5. SCOPE

- 5.1 A review of an operational matter should be directed to the “Requests for services, compliments and complaints policy”. Where simple resolution of a grievance cannot be achieved and a formal application for review is received, then the internal review procedure is to be used.
- 5.2 Any person with a sufficient interest in the decision may apply for an internal review of a decision of Council, a council employee, or other person acting on behalf of Council. The decision may include a Council policy, procedure, access to a service or fee.
- 5.3 Council operates under a range of legislation and this procedure will not apply where other statutory review or appeal processes are available to review a decision under particular legislation. (see Appendix 1)
- 5.4 The Council will not normally internally pursue an application for review of a Council decision which is currently under consideration by any other authority or agency with statutory appeal powers, or where other review processes are available, as this is likely to duplicate and misuse resources and/or to be inappropriate.
- 5.5 Whilst Council prefers to work with all persons to resolve requests for review quickly and effectively, a person may make a complaint, at any time during or after any of the steps of the process, to the Ombudsman under the *Ombudsman Act 1972*. Note that as a general rule, the Ombudsman prefers matters be addressed by Council in the first instance unless that is not appropriate to the circumstances.
- 5.6 Full co-operation with any such authority will be afforded as necessary, in order to resolve the matter as quickly as possible.

Refusal to review

- 5.7 The Council through its delegate, the Chief Executive Officer, may refuse to consider an application for Review of a Council Decision in accordance with Section 270(4) of the *Local Government Act 1999* if:

- (i) The application is made by an employee of the Council and relates to an issue concerning his or her employment; or
- (ii) It appears that the application is frivolous or vexatious; or
- (iii) The applicant does not have a sufficient interest in the matter.

The Chief Executive Officer may also refuse to consider an application where:

- (iv) The matter is currently under consideration by any other authority or agency with statutory appeal powers, or where other review processes are available; or
- (v) The application relates to decisions of Council that are set out in the Council's Annual Business Plan and Budget; or
- (vi) The application relates to decisions of Council made in accordance with the *Development Act 1993* and *Development Regulations 2008* or the City of Unley Development Plan.

5.8 Elected Members, when exercising their statutory duties, may not use the grievance process provided under Sections 270(1) and 271 of the *Local Government Act 1999*. To attempt to do so would be considered a vexatious request, as the *Local Government (Procedures at Meetings) Regulations 2013* provide Elected Members with the opportunity for a rescission motion to alter a decision of Council.

5.9 Rates or service charges

- (i) Pursuant to Section 270(2)(ca) of the *Local Government Act 1999*, where the application for review relates to the impact that any declaration of rates or service charges may have had on ratepayers, the Council will ensure the application for internal review is dealt with promptly, and, if appropriate, addressed through the provision of relief or concessions under that Act.
- (ii) It is important to note that section 270(9) of the Act provides as follows:
 “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).”

6. PROCESS

6.1 Council has nominated the Council's Chief Executive Officer or his/her delegate as the officer responsible for dealing with any formal application for internal review.

6.2 A formal application for an internal review of a Council decision must be made in writing, marked “Internal review request”, and addressed to the Chief Executive Officer or the Mayor:

- (i) If the request is for a review of a decision made by the Council as the elected body, or a decision made by an employee of the Council, or other person acting on behalf of Council, the application should be addressed to the Chief Executive Officer of the City of Unley; or

- (ii) If the request is for a review of a decision made by the Chief Executive Officer, the application should be addressed to the Mayor.

By post or hand-delivered:

Internal review request
The Chief Executive Officer or Mayor
City of Unley
181 Unley Road
UNLEY 5061 SA

or

By email:

The Chief Executive Officer or Mayor
pobox1@unley.sa.gov.au

or

By facsimile:

Internal review request
The Chief Executive Officer or Mayor
City of Unley
(08) 8271 4886

6.3 A formal application for an internal review:

- (i) should use the attached “Application for Review of a Council Decision” (form 1);
- (ii) must provide full details of the decision for which the applicant is seeking a review; and
- (iii) must be lodged within six (6) months of the original decision being made (with discretion provided by the CEO to allow a longer time limit to apply in particular cases. This will be assessed on a case-by-case basis.)

6.4 The process for applying and participating in a review of a Council decision is to be made as accessible as possible, with assistance provided if considered necessary. Assistance may include interpreter and/or translation services, assistance with writing the application, or ensuring ease of physical access to meeting rooms etc. If a person refuses assistance, that does not negate their right to proceed with the application.

6.5 The CEO or delegate (or Mayor where appropriate) will assess the application and determine the appropriate action. This may include direct referral of the matter to Council, or to an external person or panel independent of the Council to conduct the review, or to SAPOL if a criminal matter or to the Office of Public Integrity.

6.6 The CEO may appoint another council officer (the “reviewing officer”) such as a member of the Executive Management Team or senior officer, who was independent of the original decision, or set up a panel for the express purpose (i.e. it does not have permanent status) to conduct the review.

6.7 Where the CEO or delegate, or Mayor, or reviewing officer has reasonable suspicion that the complaint involves corruption in public administration, serious or systemic misconduct in public administration, or serious or systemic maladministration then the

matter **must** be reported to the Office of Public Integrity (OPI) in accordance with the *Independent Commissioner Against Corruption Act 2012*.

6.8 The role of the reviewing officer is to:

- (i) 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;
- (ii) Acknowledge receipt of the application;
- (iii) Ensure that the application is recorded on the Internal Review Register;
- (iv) Outline the timeframes involved and the action to be taken in the first instance;
- (v) Undertake a preliminary investigation to determine what (if any) actions have already been taken to try to resolve the matter;
- (vi) Keep the applicant informed of progress;
- (vii) Ensure that adequate records of the review process and findings are produced and maintained;
- (viii) Provide a report(s) to Council at intervals through the review process and a final report at the conclusion of the process.

6.9 In undertaking the internal review, the CEO, or Council, or delegated party will review the decision in question to ensure that the original decision making process had regard to the following;

- (i) The decision maker had the power to make the decision;
- (ii) All matters relevant to the decision were considered and were not influenced by extraneous factors;
- (iii) The process was free from bias;
- (iv) The decision maker did not exercise a discretion or power in bad faith or for improper purpose;
- (v) The decision was made on facts and evidence;
- (vi) The decision was reasonable.
- (vii) Any relevant legislation, policies or procedures were considered;
- (viii) The decision maker did not exercise a discretionary power at the direction of another person.

6.10 Where a request for review is referred to Council, the CEO or delegate (or Mayor) will prepare a report to Council which will include all relevant information about the decision being reviewed.

6.11 Matters to be referred direct to Council for consideration or reconsideration include:

- (i) A decision made by formal resolution of Council;
- (ii) A decision or recommendation made by a Section 41 Council Committee;
- (iii) A decision made by the CEO;
- (iv) Civic and ceremonial matters;
- (v) Any other matters at the discretion of the CEO.

Where a request for review has been referred to Council, the applicant will be advised of the date that the report will be presented and will be given the opportunity to provide a written or verbal submission (i.e. deputation) in relation to the report for the Council's consideration.

- 6.12 Applications for a review of a Council decision are to be formally acknowledged within 3 working days of receipt, including advice to the applicant about the anticipated review process and time line.
- 6.13 In most cases requests for review will be considered and determined within 28 days. However, in some circumstances the review process may take longer.
- 6.14 The applicant will be encouraged to participate co-operatively in the review process.
- 6.15 The applicant will be kept informed about the progress of the review either by email, letter or telephone.
- 6.16 Opportunity to provide additional information:
 - (i) After initially assessing an application for an internal review of council decision, the reviewing officer may (if deemed appropriate) invite the applicant to provide further information to assist in understanding the applicant's concerns, the issue to be investigated and the outcome or remedy sought.
 - (ii) Applicants are able to supply information relevant to the initial application at any time during the review process. However, if the additional information is determined to be of a different nature the applicant will be advised of the need to submit a separate application for an internal review of a council decision.
- 6.17 The applicant will be informed in writing of the outcome of the review within 5 business days of the determination being made.
- 6.18 While there is no statutory requirement to give reasons for a decision, Council may provide reasons for the decision of the reviewing officer where practicable. Council will aim to give reasons to explain the outcome where:
 - (i) A decision is not in accordance with the adopted policy;
 - (ii) A decision is likely to detrimentally affect rights or interests of individuals (or organisations) in a material way;
 - (iii) Conditions are attached to any approval, consent, permit, licence or other authorisation.

6.19 There is no application fee for a formal internal review under section 270(1) of the *Local Government Act 1999*.

7. 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 “Procedural fairness” involves:

- (i) Giving an individual;
 - (a) a right to put their case forward, and,
 - (b) an opportunity to provide all relevant documentary evidence, rather than an oral hearing.
- (ii) Ensuring that the reviewer is not biased and does not have a personal interest in the outcome, and
- (iii) Acting only on proper evidence.

8. REMEDIES

8.1 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 the applicant. The remedy will be proportionate and appropriate to the matter. The range of outcomes includes:

- (i) An explanation;
- (ii) Mediation, conciliation, or neutral evaluation;
- (iii) A change of policy, procedure or practice;
- (iv) A correction of misleading records;
- (v) Disciplinary action;
- (vi) Referral of a matter to an external agency for further investigation or prosecution.

9. CONFIDENTIALITY

9.1 The details of any request for internal review will be kept confidential as far as practicable. When no longer practicable, the applicant will be advised.

9.2 The applicant will be encouraged to observe confidentiality as this is likely to achieve the fairest result for all concerned.

9.3 The applicant’s personal information will be used by the reviewing officer in relation to investigating and reviewing the application.

9.4 Only relevant parties will be involved in the internal review process.

- 9.5 Where a request for review is referred to the Elected Council for determination, the Council may consider the matter in confidence where it is lawful and appropriate to do so, subject to there being grounds under section 90(3) of the *Local Government Act 1999*.
- 9.6 If the application is referred to the Ombudsman, the council will share any relevant information relating to the application with the Ombudsman's office in accordance with the *Ombudsman Act 1972*.
- 9.7 Information contained within the application may be accessible under the *Freedom of Information Act 1991*.

10. RECORD KEEPING

- 10.1 The reviewing officer must keep written records of interviews and the process undertaken.
- 10.2 Records must be factual and objective.
- 10.3 Records must be securely stored and lodged in council's records management system and in compliance with the *State Records Act 1997*.
- 10.4 Only those persons with a genuine need to view the material will be allowed access to the records.

11. ANNUAL REPORTING

- 11.1 In accordance with section 270(8) of the *Local Government Act 1999*, the Council will, on an annual basis, initiate and consider a report that relates to:
- (i) The number of applications for review made under this section, and
 - (ii) The kinds of matters to which the applications relate; and
 - (iii) The outcome of the applications made under this section; and
 - (iv) Such other matters as may be prescribed by the Regulations under the Act.

12. COMPETITIVE NEUTRALITY COMPLAINTS

- 12.1 Matters regarding competitive neutrality pricing should be addressed to the;

Competitive Neutrality Complaints Secretariat
Department of Premier and Cabinet
200 Victoria Square, Adelaide SA 5000.

- 12.2 The complaint must be made in writing and contain full details of the alleged infringement.
- 12.3 Further information is available on the Department of Premier and Cabinet website; www.dpc.sa.gov.au

13. DISPUTE RESOLUTION

- 13.1 At its absolute discretion, and in accordance with section 271 of the *Local Government Act 1999*, the Council may use alternate dispute resolution methods such as mediation, conciliation or neutral evaluation to resolve an application in circumstances where the CEO or his/her delegate deems such a course of action appropriate and the applicant is amenable to that process.
- 13.2 Costs and expenses associated with mediation, and/or conciliation or neutral evaluation will be shared equally between the Council and the other party in accordance with section 271(7) of the *Local Government Act 1999*.

14. DEFINITIONS

An “**applicant**” is the party lodging the request for internal review. For example a resident, ratepayer, members of a community group, users of Council facilities and visitors to the area.

“**Business day**” means a day when the Council is normally open for business (i.e. Monday to Friday, excluding public holidays).

“**CEO**” is the Chief Executive Officer of the Corporation of the City of Unley.

“**Council**” is the Corporation of the City of Unley.

A “**council decision**” is a formal decision of the Elected Council or a section 41 Council Committee, a decision made under delegation by an employee of Council, or a decision by other persons acting on behalf of Council.

“**Employee**” includes a person employed directly by the Council in a full-time, part time or casual capacity (whether that position is permanent or contractual) and a person providing services to, or on behalf of, the Council even though they may be employed by another party.

“**Reasonableness**”; the appropriate standard or quality of decision-making that must be brought to bear when making an administrative decision.

A “**Vexatious request**” is any request;

- (i) From an applicant 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
- (ii) Is considered by the reviewing officer to be mischievous, without sufficient grounds or serving only to cause annoyance.

15. LEGISLATION / REFERENCES

- 15.1 The procedure is mandatory under section 270(1) of the *Local Government Act 1999*.
- 15.2 “Revised Clause 7 Statement on the application of competition principles to local government under the Competition Principles Agreement.” South Australian Government in conjunction with the Local Government Association of South Australia. September 2002. See; www.dpc.sa.gov.au
- 15.3 Other legislation:
Freedom of Information Act 1991
Independent Commissioner Against Corruption 2012
Ombudsman Act 1972
State Records Act 1997

16. POLICY DELEGATIONS

- 16.1 Full information about the sub-delegated powers and duties is contained in the Council Delegations Register.

17. ROLES/RESPONSIBILITIES

- 17.1 Council has nominated the Council’s Chief Executive Officer or his/her delegate as the officer responsible for dealing with any formal application for internal review except where the application should be referred to the Mayor. (See also clauses 6.1, 6.2 and 6.5)

18. AVAILABILITY

- 18.1 The policy is available for public inspection during normal office hours from;

Civic Centre
181 Unley Road
Unley SA 5061

- 18.2 A copy may be purchased for a fee as determined annually by Council.

- 18.3 It is also available for viewing, download and printing free of charge from the Council’s website, www.unley.sa.gov.au

19. DOCUMENT HISTORY

Date:	Council/Committee/Internal	Comment:
25 June 2007	C124/07	
19 April 2010	CSP306/10	
14 May 2012	CSP108/12	
28 May 2012	C420/12	
26 May 2014	C1148/14	
27 March 2017	C800/17	

OTHER REVIEW PROCESSES

The following list provides examples of legislation which include review or complaint processes. The list is not exhaustive, and officers should check for other mechanisms which may be available to the applicant.

Development Act 1993

Expiation of Offences Act 1996

Fire and Emergency Services Act 2005

Food Act 2001

Freedom of Information Act 1991

Local Government Act 1999 – Elected Member conflict of interest - District Court

Local Government (Elections) Act 1999

Ombudsman Act 1972

South Australian Public Health Act 2011

Valuation of Land Act 1971

HACC complaints

CITY OF UNLEY

INTERNAL REVIEW OF A COUNCIL DECISION

APPLICATION FORM

In accordance with Section 270(1) of the Local Government Act 1999

Applicant's Details

Applicant's name:

Applicant's address:

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Email:

Telephone: Date of Application:

Application received by:

Application referred to:

Summary of decision to be reviewed:

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List of attachments:

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Assistance required:

Type: (eg interpreter).....

Council to arrange: Yes / No

Applicant to arrange: Yes / No

Signature of applicant: Date:

Name of staff member: (please print): Position:

Signature of staff member: Date:

CITY OF UNLEY
INTERNAL REVIEW RECORD
ASSESSMENT

Applicant's details:

Applicant's name:
Applicant's address:
.....
Email:
Telephone: Date of Application:

Check List:

- 1. Summary of decision:
- 2. Staff involved in original decision making process:
- 3. Date of original decision:
- 4. Applicant's reasons for requesting a review:
- 5. Any relevant legislation: (Is this the correct review/appeal mechanism?):
- 6. Other persons/ parties affected by the decision:

Findings:

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Action:

- 1. Resolved (give details):
- 2. Referred for further action to:
- 3. Referred to external review mechanism (specify which Legislation etc):
- 4. Referred to Council:
- 5. Referred to external mediator, conciliation or neutral evaluation:
Name: Telephone:
Organisation:
Address:

List of attached documents:
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Applicant notified:

Officer: Date: Method:
(please print) (eg. By post)

Position:

Reviewing Officer (print): **Signature:**

Position: **Date:**

CITY OF UNLEY

REVIEW OF A COUNCIL DECISION

RESOLUTION FORM

In accordance with Section 270(1) of the Local Government Act 1999

Applicant's Details

Applicant's name:

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Applicant's address:

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Email:.....

Telephone: Date of Application:

Outcome:

Original decision: Stands Reversed Modified

Recommendations to be implemented:

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Timeframe:

Summary of costs: Attach list showing amount, to whom paid, type of cost (eg. Court fees)

Total cost:

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Applicant notified:

Yes No

Notification Method:

Officer's Name: (print)..... Position:

Officer's signature: Date:

Section 270(1) - INTERNAL REVIEW PROCESS

