

## S0014: INTERNAL REVIEW OF COUNCIL DECISIONS PROCEDURE

<b>Policy Type:</b>	Statutory Procedure
<b>Responsible Department:</b>	Office of the CEO
<b>Responsible Officer:</b>	Executive Manager, Office of the CEO
<b>Related Policies and Procedures</b>	<ul style="list-style-type: none"> <li>• S0019: Customer Complaint Policy</li> <li>• Complaints Handling Procedure Under Council Members' Code of Conduct</li> </ul>
<b>Community Plan Link</b>	<i>Civic Leadership:</i> 4.1 We have strong leadership and governance 4.3 Our business systems are effective and transparent
<b>Date Adopted</b>	25 June 2007: C124/07
<b>Last review date</b>	25 November 2019: C0132/19
<b>Next review date</b>	November 2022
<b>Reference/Version Number</b>	S0014: Version 5
<b>ECM Doc set I.D.</b>	<a href="#">1731990</a>

### 1. PREAMBLE

- 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 City of Unley's Internal Review of Council Decisions Procedure has been adopted in accordance with Section 270 of the *Local Government Act 1999*. The Procedure is one aspect of Council's customer focused approach to service delivery. It provides a further opportunity to review the way Council provides services to the community, and to identify areas for improvement.

### 2. SCOPE

- 2.1. This Procedure is mandatory under section 270(1) of the *Local Government Act 1999* and applies when reviewing the decisions of:
  - (a) Council;
  - (b) employees of Council; and
  - (c) other persons acting on behalf of Council
- 2.2. Any person with a sufficient interest in a decision may apply for an internal review of a decision of Council, a Council employee, or other person acting on behalf of Council.

2.3. The decision may include a Council policy, procedure, and access to a service or fee.

2.4. ***Relationship with other Council Policies & Procedures***

2.4.1. Council also has a Customer Complaint Policy for dealing with complaints and requests for service. As a general rule, Council will promote that Policy with its associated procedures in the first instance as it offers the potential for immediate resolution.

2.4.2. A review of an operational matter should be directed in the first instance to the Customer Complaints Policy. Where simple resolution of a grievance cannot be achieved and a formal application for review is received, this Procedure is to be used.

2.4.3. An Internal Review of a Council Decision is the third tier in Council's complaints handling process, and will commence at the point where:

- A request for the review of a Council decision is received; or
- A complaint escalates from a Second Tier Review under Council's *Customer Complaint Policy*.

2.5. ***Matters Outside the Scope of the Procedure***

2.5.1. The following matters will not be considered under this Procedure:

- Other provisions in the *Local Government Act 1999* that prescribe appeal arrangements in certain circumstances. For example objections to valuations made by a Council and appeals against orders made pursuant 254 of the Act (Power to make orders).
- Other legislation, which has its own prescribed appeal procedures, including:
  - the *Development Act 1993*;
  - the *Planning, Development and Infrastructure Act 2016*;
  - the *Freedom of Information Act 1991*.

2.5.2. In addition, the Procedure will not apply when an alternative statutory process for review or appeal exists in other legislation.

2.5.3. While Council prefers to work with its customers to resolve requests for review quickly and effectively, an Applicant will always retain the right to seek other forms of resolution, such as contacting the Ombudsman<sup>1</sup>, an external authority, or taking legal action at any time.

2.5.4. Full cooperation with any such authority will be afforded as necessary, in order to resolve the matter as quickly as possible.

### **3. PURPOSE/OBJECTIVES**

3.1. The primary objectives of this Procedure are to:

- (i) satisfy the mandatory requirements of Section 270(1) of the *Local Government Act 1999*;

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<sup>1</sup> Note: As a general rule, the Ombudsman prefers that matters be addressed by Council in the first instance, unless that is not appropriate in the circumstances.

- (ii) provide a fair, objective, and consistent procedure for the review of decisions of the Council, employees of Council, and other persons acting on behalf of the council;
- (iii) Where appropriate, use information obtained during the review to improve Council's decision making processes and service delivery.

#### 4. DEFINITIONS

- 4.1. **Applicant** is the party lodging the request for internal review and must have a sufficient interest in the matter. For example a resident, ratepayer, members of a community group, users of Council facilities and visitors to the area.
- 4.2. **Business Day** means a day when the Council is normally open for business (i.e. Monday to Friday, excluding public holidays).
- 4.3. **CEO** is the Chief Executive Officer of the Corporation of the City of Unley, or their delegate.
- 4.4. **Council** is the elected body of the Corporation of the City of Unley.
- 4.5. **Council Decision** is the original decision, the subject of the request for internal review, and either a:
- (i) formal decision of the elected body of Council or a Council Section 41 Committee;
  - (ii) decision made under delegation by the Chief Executive Officer;
  - (iii) decision made under delegation by an Employee of Council, or
  - (iv) a decision made by other persons acting on behalf of Council.
- 4.6. **Decision Maker** is the Council, Chief Executive Officer, or person delegated, to assess the Internal Review Recommendation made by the Reviewing Officer, and make the Final Decision on the internal review.
- The Decision Maker should make a new and independent decision that is not bound by the recommendations of the Reviewing Officer and must:
- (i) affirm the Council decision;
  - (ii) vary the Council Decision; or
  - (iii) make a new decision.
- 4.7. **Employee** includes a person employed directly by 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.
- 4.8. **Final Decision** is the final determination made by the Decision Maker in assessing the Internal Review of Decision.
- 4.9. **Internal Review Recommendation** is the report provided by the Reviewing Officer to the Decision Maker, setting out the scope, evidence considered, and assessment of the internal review request, and a recommendation to the Decision Maker.
- 4.10. **Reasonableness** is the appropriate standard or quality of decision-making that must be brought to bear when making an administrative decision.
- 4.11. **Reviewing Officer** is the Council officer, external person or sessional panel delegated by the Council or Chief Executive Officer to review the Council Decision and make an Internal Review Recommendation to the Decision Maker on the Council Decision. The Reviewing Officer will:

- (i) not have been involved with the original decision; **and**
- (ii) be sufficiently independent of the original decision maker.

4.12. A **Vexatious Request** is any request:

- (i) from an Applicant who has consistently, over a period of time, complained about minor or trivial matters;
- (ii) that has previously been dealt with, and no new information has been provided by the complainant;
- (iii) where the Applicant, or the person on whose behalf the request was made, does not have a sufficient personal interest in the matter raised in the complaint; **or**
- (iv) that is frivolous or not made in good faith; **and**
- (v) considered by the CEO having regard to all the circumstances of the request, that an investigation or the continuance of the investigation of the matter raised in the request, is unnecessary or unjustifiable

## 5. ROLES AND RESPONSIBILITIES

- 5.1. Council has nominated the Chief Executive Officer as the officer responsible for receiving any Internal Review of Decision Requests, except where the application should be referred to the Mayor (per Clause 8.1 (ii)).
- 5.2. Once in receipt of an Internal Review of Decision Request, the Chief Executive Officer or Mayor may assign a Reviewing Officer to manage the internal review process. The Reviewing Officer cannot be the Decision Maker, unless a remedy can be reached without internal review, within their level of delegated authority.
- 5.3. 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 in the corporate record keeping system and captured for reporting purposes;
  - (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, per clause 9;
  - (vi) Keep the Applicant informed of progress;
- 5.4. Ensure that adequate records of the review process and findings are produced and maintained.

## 6. INTERNAL REVIEW PRINCIPLES

- 6.1. An internal review will examine the administrative process by which the Council Decision was made, not the decision itself. The review may or may not result in the disputed decision being reconsidered and overturned.
- 6.2. The internal review process will afford 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.

- 6.3. All reasonable attempts will be made to review a decision quickly and efficiently.
- 6.4. The lodging of an Application will not automatically suspend or put on hold the subject of the review.

## 7. INTERNAL REVIEW OF DECISION REQUESTS

7.1. A formal application for an internal review of a Council Decision must be made in writing, marked "Internal Review of Decision Request", and addressed to:

(i) **Chief Executive Officer**

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) **Mayor**

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

### 7.2. **Relevant Contact Details**

7.2.1. The relevant contact details for making an Internal Review of Decision Request are:

<b>Address</b>	Internal Review of Decision Request ATT: Chief Executive Officer, or Mayor City of Unley PO Box 1 UNLEY SA 5061
<b>Email</b>	<a href="mailto:pobox1@unley.sa.gov.au">pobox1@unley.sa.gov.au</a> RE: Internal Review of Decision Request ATT: Chief Executive Officer, or Mayor

7.3. An Internal Review of Decision Request :

- (i) should use the attached "Internal Review of Decision Request " (**Form 1**);
- (ii) must provide full details of the Council Decision for which the Applicant is seeking a review; and
- (iii) must be lodged within six (6) months of the Council Decision being made.
- (iv) A longer time limit may apply in particular cases. Acceptance of the request for review in these circumstances is at the discretion of the Chief Executive Officer, and will be assessed on a case-by-case basis.

7.4. 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.

7.5. The CEO, or Mayor where appropriate, will assess the application and determine the appropriate action. This may include direct referral of the matter to a Reviewing Officer, or to an external relevant authority, such as SAPOL, the Environment Protection Authority, or SafeWorkSA,.

- 7.6. Where there is a 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 in accordance with the *Independent Commissioner Against Corruption Act 2012*.
- 7.7. There is no application fee for an internal review of Council Decision under section 270(1) of the *Local Government Act 1999*.

## 8. INITIAL ASSESSMENT OF REQUEST & OPTIONS FOR REFUSAL

- 8.1. The Chief Executive Officer or Mayor will take receipt of an Internal Review of Decision Request and act as the Reviewing Officer, or may assign a Reviewing Officer to manage the internal review process and provide an **Internal Review Recommendation** to the Decision Maker.
- 8.2. Before conducting an internal review of the Council Decision, the Reviewing Officer will conduct an initial assessment of the application to determine if the matter will be reviewed, or if a remedy can be reached without internal review, within their level of delegated authority.
- 8.3. Following an initial assessment, the Reviewing Officer may refuse to consider an Internal Review of Decision Request in accordance with Section 270(4) of the *Local Government Act 1999* if:
  - 8.3.1. The application is made by an employee of the Council and relates to an issue concerning their employment; or
  - 8.3.2. It appears that the application is frivolous or vexatious; or
  - 8.3.3. The Applicant does not have a sufficient interest in the matter.
- 8.4. The Reviewing Officer may also refuse to consider an application where:
  - 8.4.1. The matter is currently under consideration by any other authority or agency with statutory appeal powers, or where other review processes are available;
  - 8.4.2. The application relates to decisions of Council that are set out in the Council's Annual Business Plan and Budget; or
  - 8.4.3. The application relates to decisions of Council made in accordance with the *Development Act 1993* and *Development Regulations 2008*, *Planning, Development and Infrastructure Act 2016*, or the City of Unley Development Plan.
- 8.5. **Elected Members**
  - 8.5.1. When exercising their statutory duties, Elected Members may not use the grievance process provided under Sections 270(1) and 271 of the *Local Government Act 1999*.
  - 8.5.2. 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.
- 8.6. **Rates or Service Charges**
  - 8.6.1. 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.

8.6.2. 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).*

- 8.7. Internal Review of Decision Requests are to be formally acknowledged within three (3) **Business Days** of receipt, including advice to the Applicant about the anticipated review process and time line.
- 8.8. In most cases requests for review will be considered and determined within 28 **Business Days** of formal acknowledgement. However, in some circumstances the review process may take longer due to the nature and complexity of the application. The Reviewing Officer will contact the Applicant to advise of the circumstances and revised date for receiving the response.
- 8.9. The Applicant will be encouraged to participate co-operatively in the review process.
- 8.10. The Applicant will be kept informed about the progress of the review by their preferred method of contact (i.e. email, letter, text, or telephone).
- 8.11. In undertaking the internal review, the Reviewing Officer will review the Council Decision to ensure that the original decision making process had regard to the following:
- (i) The original decision maker had the power to make the Council 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 original decision maker did not exercise a discretion or power in bad faith, or for an improper purpose;
  - (v) The Council Decision was made on facts and evidence;
  - (vi) The Council Decision was reasonable;
  - (vii) Any relevant legislation, policies or procedures were considered; and
  - (viii) The decision maker did not exercise a discretionary power at the direction of another person.
- 8.12. **Opportunity to provide additional information:**
- 8.12.1. Throughout the review process, the Reviewing Officer may (if deemed appropriate) invite the Applicant to provide further information to assist in understanding the Applicant's concerns, the issue(s) to be investigated, and the outcome or remedy sought.
- 8.12.2. 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 Decision Request.

- 8.13. Once the matter has been reviewed by the Reviewing Officer, an **Internal Review Recommendation** will be provided to the Decision Maker. The Decision Maker will assess the Recommendation, and make a determination to:
- (i) affirm the Council Decision;
  - (ii) vary the Council Decision; or
  - (iii) make a new decision.
- 8.14. **Council as the Decision Maker**
- 8.14.1. Where Council is the Decision Maker, the Chief Executive Officer, or Mayor in consultation with the Chief Executive Officer, will appoint an external Reviewing Officer to undertake the internal review and provide the Internal Review Recommendation.
- 8.14.2. The Chief Executive Officer, or Mayor, will prepare a report to Council attaching the Internal Review Recommendation and all relevant information about the original decision being reviewed.
- 8.14.3. Matters to be referred to Council as the Decision Maker 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; and
  - (v) Any other matters at the discretion of the CEO.
- 8.14.4. Once the meeting of Council to determine the matter has been scheduled, the Applicant will be advised of the date that the report will be presented.
- 8.15. The Applicant will be informed in writing of the outcome of the review within five (5) Business Days of the Final Decision being made.
- 8.16. While there is no statutory requirement to give reasons for a decision, Council may provide reasons for the decision of the Decision Maker 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.

## 9. PROCEDURAL FAIRNESS

- 9.1. Council will observe the principles of procedural fairness (or natural justice) when exercising its statutory powers that could affect the rights and interests of individuals.
- 9.2. Procedural fairness involves:
- 9.2.1. the hearing rule - providing people likely to be adversely affected by decisions an opportunity to:
- present their case;
  - have their response taken into consideration before the decision is made.
- 9.2.2. **the bias rule** – ensuring that the Reviewing Officer is independent, **free from bias** and does not have a personal interest in the outcome, and



9.2.3. **the evidence rule** - acting only on rational evidence that is logically capable of supporting the facts.

## 10. REMEDIES

- 10.1. 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, the Applicant and in the public interest. The remedy will be proportionate and appropriate to the matter.
- 10.2. The range of outcomes includes:
  - 10.2.1. An explanation;
  - 10.2.2. Mediation, conciliation, or neutral evaluation;
  - 10.2.3. A change of policy, procedure or practice;
  - 10.2.4. A correction of misleading records;
  - 10.2.5. Disciplinary action; and
  - 10.2.6. Referral of a matter to an external agency for further investigation or prosecution.

## 11. CONFIDENTIALITY

- 11.1. 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.
- 11.2. The applicant will be encouraged to observe confidentiality as this is likely to achieve the fairest result for all concerned.
- 11.3. The Applicant's personal information will be used by the Reviewing Officer in relation to investigating and reviewing the application.
- 11.4. Only relevant parties will be involved in the internal review process.
- 11.5. 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 relevant grounds under section 90(3) of the *Local Government Act 1999*.
- 11.6. 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*.
- 11.7. Information contained within the application may be accessible under the *Freedom of Information Act 1991*.

## 12. RECORD KEEPING

- 12.1. The Reviewing Officer must keep written records of interviews and the process undertaken.
- 12.2. Records must be factual and objective.
- 12.3. Records must be securely stored and lodged in Council's records management system and in compliance with the *State Records Act 1997*.
- 12.4. Only those persons with a genuine need to view the material will be allowed access to the records.

### 13. ANNUAL REPORTING

13.1. 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:

13.1.1. The number of applications for review made under this section, and

13.1.2. The kinds of matters to which the applications relate; and

13.1.3. The outcome of the applications made under this section; and

13.1.4. Such other matters as may be prescribed by the Regulations under the Act.

### 14. POLICY DELEGATIONS

14.1. Nil

### 15. LEGISLATION

15.1. The procedure is mandatory under section 270(1) of the *Local Government Act 1999*.

15.2. Other legislation:

- *Freedom of Information Act 1991*
- *Independent Commissioner Against Corruption 2012*
- *Ombudsman Act 1972*
- *State Records Act 1997*

### 16. AVAILABILITY OF POLICY

16.1. The Policy is available for public inspection during normal office hours at:

The Civic Centre,

181 Unley Road, Unley SA 5061.

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

It is also available for viewing, download and printing free of charge from the Council's website [www.unley.sa.gov.au](http://www.unley.sa.gov.au).

### 17. DOCUMENT HISTORY

Date	Ref/Version No.	Comment
25 June 2007	C124/07 : V1	
28 May 2012	C420/12 : V2	
26 May 2014	C1148/14 : V3	
27 March 2017	C800/17 : V4	
26 August 2019	C0132/19 : V5	



*Form 1*

## **INTERNAL REVIEW OF DECISION REQUEST**

*Local Government Act 1999*

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### **APPLICANTS DETAILS:**

**Applicant Name:**

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**Telephone Number:**

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**Email:**

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**Address:**

.....

.....

**Date of Application:**

/       /

.....

**Preferred means of contact:**

.....

### **DECISION TO BE REVIEWED**

Please provide all relevant details, such as the date of the decision, the name of the staff member or department, and any previous contact with Council about this matter. (Attach additional pages if required)

**Date of Decision:**

/       /



*Form 1*  
**INTERNAL REVIEW OF DECISION REQUEST**

*Local Government Act 1999*

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**Reasons for Review Request:**

**Resolution Sought:**





Form 1

# INTERNAL REVIEW OF DECISION REQUEST

Local Government Act 1999

**List of Attachments:**

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**ASSISTANCE REQUIRED**

**Type:** (e.g. interpreter)

.....

.....

**Council to arrange:** YES / NO

**Applicant to arrange:** YES / NO

**Signed:**

.....

**Date:**

/ /

<b>City of Unley Use Only</b>	
<b>Received (date and time):</b>	_____ / _____ / _____ at _____ am/pm
<b>Application received by:</b>	
Name:	.....
Position Title:	.....
<b>Application referred to:</b>	
Name:	.....
Position Title:	.....

