

Internal Review of Council Decisions Policy



Record number	D21/90683
Responsible Manager	Manager Governance & Policy
Other key internal stakeholders	Manager Customer & Communications Director Organisational Services & Excellence
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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	2024

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1. PURPOSE

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 important that these decisions are transparent, fair, objective, consistent and subject to review.

An internal review of a Council decision is available under section 270 of the Local Government Act 1999, providing an opportunity for individuals to make application to Council to reconsider a decision-making process and all the evidence relied on to make a decision, including new evidence if relevant.

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, and to detail how Council will deal with applications for internal reviews of Council decisions (referred to as a 'reviewable decision').

2. POLICY

An internal review of a Council decision will examine the correctness of the procedures followed (eg. Legislation, policy, procedure) in making the decision and may also examine the merits of the decision itself (considering both existing and new evidence available). This could lead to the original decision being upheld, varied or overturned.

Council also has processes in place for dealing with requests for services and customer complaints. 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.

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.

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.

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.

While Council prefers to resolve requests directly with its customers, 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.

2.1 Matters outside the scope of Internal Review

There may be some Council decisions where this Policy and process may not apply, such as:

1. The application relates to a matter where another legislative process of appeal is applicable, including (but not limited to) decisions pursuant to:
 - Planning, Development and Infrastructure Act 2016
 - Freedom of Information Act 1991
 - Ombudsman Act 1972
 - A section 255 Order under the Local Government Act 1999
 - Expiation of Offences Act 1996
 - Dog and Cat Management Act 1995
 - South Australian Public Health Act 2011.
2. Matters where Council cannot review its decision (e.g. the annual rate declaration after rate notices have been generated, the decision has already been implemented and cannot be revoked)
3. The application is made by an employee of the Council and relates to an issue concerning the employee's employment (refer s270(4)(a) of the Act) or volunteer conduct
4. It appears that the application is frivolous or vexatious (refer s270(4)(b) of the Act)
5. The applicant does not have sufficient interest in the matter - this will be determined on a case-by-case basis (refer s270(4)(c) of the Act)
6. The CEO or nominated delegate is satisfied that the subject matter of the application has been or is already the subject of a review by the Council or an investigation, inquiry or review by another authority.
7. Matters covered by Code of Conduct for Council members (or equivalent).
8. A recommendation of the Ombudsman.
9. A decision that has already been reviewed under section 270 (unless determined by the CEO on a case by case basis).
10. Matters that have been referred to the Local Government Association Mutual Liability Scheme (LGAMLS).

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 may be considered for the conduct of a section 270 review on a case-by-case basis, depending on the merits of the individual application provided it isn't contrary to other legislative avenues.

A request by a complainant/applicant for further reasons or explanations in relation to a decision is not a request for an internal review.

2.2 Making an application

An application for a review of a Council decision must:

1. Be in writing, ideally using the [Internal Review of Council Decisions Application form](#) (available on Council's website)
2. Be clear about the decision to be reviewed – referred to as 'Reviewable Decision'
3. State the reason for applying for the review (eg. decision making process not in accordance with legislation, policy or procedure; relevant evidence not considered; decision was not lawful) – this must be more justification than not being satisfied with the decision
4. Provide supporting information or evidence associated with the application
5. Describe how the decision impacts on their rights and/or interests (must demonstrate sufficient interest beyond the interest of the general ratepayer)
6. Specify the resolution sought
7. 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)

No one should be excluded from lodging an application for review because of any difficulties they may have in representing themselves. Council may 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.

There is a prescribed \$20 fee payable for a review of a Council decision (prescribed by Government Gazette on 16 September 2021) which came into effect on 10 November 2021. This fee may be reduced, waived or refunded (in whole or part) at the discretion of Council or the CEO.

Applications for a review of a Council decision will be acknowledged in writing within five (5) working days of receiving the application.

2.3 Undertaking the internal review

1. The CEO will assess the internal review application and determine whether the matter will be subject to an internal review (pursuant to this Policy). Any reasons for refusing an internal review will be provided to the applicant.
2. Where a matter is assessed as being subject to internal review, an Internal Review Officer will be appointed to undertake the review and/or prepare an outcome letter and/or report (if applicable). The person appointed to assist with the review must be independent of the original decision (i.e. have no prior involvement in making the original decision) and should take into account the level within the organisation at which the decision was made. An external advisor may be recommended where the decision under review is complex and/or raises legal questions. The following will assist in determining who will undertake the internal review (noting any application may be referred to Council at the discretion of the CEO):

Original decision maker	Internal Review Officer (may be an external advisor)
Council employee	Nominated by the CEO
CEO	Director or Council
Council / Committee	Council

3. Applicants will be given the opportunity to provide a written or verbal submission in relation to the review.
4. The Internal Review Officer will consider the process and evidence (merits) considered in making the original decision, and the basis for the decision reached to ensure that the original decision was fair and reasonable (valid, appropriate, lawful) ,including whether:
 - a. The decision maker had the power/delegation to make the decision and exercised it in good faith (without duress or influence of another person)
 - b. The decision maker had no conflict of interest, bias or perceived bias
 - c. All matters were considered which were relevant to the making of the decision and did not take into account matters which were not relevant (eg. legislation, policies and procedures)
 - d. Findings of fact were based on evidence and sufficient analysis of the facts was undertaken
 - e. The principles of procedural fairness were followed
 - 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
 - i. Any additional relevant information or material provided by the applicant is considered.
5. Council will aim to provide a determination within 20 business days of the application fee being received. 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 business days, the applicant will be provided with periodic updates on the progress of the review until the review is finalised.
6. The applicant will be informed in writing of the outcome of the review (whether a determination is made that the reviewable decision is upheld, overturned, varied or other option determined by the CEO).
7. Where appropriate, the findings of the internal review be considered in regard to how Council's existing practices can be improved.

In the case of applications relating to the impact that any declaration of rates or service charges may have had on ratepayers, these applications should be dealt with promptly and, if appropriate, addressed through the provisions of relief or concessions under the Act. As part of the internal review process in these instances, 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).

2.4 Procedural Fairness

1. Principles of natural justice and procedural fairness will be observed in dealing with all applications. Natural justice involves:

- a. Every applicant is treated equally and has the opportunity to make an application for review of a decision covered by this procedure
- b. Giving an applicant a right to put their case forward and opportunity to provide relevant documentary evidence
- c. An unbiased assessment is undertaken
- d. Decisions are based on sound evidence
- e. The identity of the applicant being kept confidential, where appropriate.
- f. Applicants receiving information about the outcome of the review

2.5 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.

2.6 Reporting

In accordance with section 270(8) of the Act, Council will also provide a report in each annual report on internal reviews as required by legislation.

3. DEFINITIONS

For the purposes of this policy the following definitions apply:

Act

Local Government Act 1999.

Applicant

A person who makes application for the review of a decision.

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. Refer Delegations Register for delegates.

Original Decision Maker

The person that made the original decision that is the subject of the internal review process

Reviewable Decision

The decision that is being reviewed and reconsidered.

4. 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:

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

Section 270(2) states that the legislative requirements that the procedures must address at a minimum.

4.1 Other references

Council's document including:

- a. [General Complaints Policy](#)
- b. [Requests for Services Policy](#)
- c. [Internal Review of Council Decisions Application](#) (Form)

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

5. STRATEGIC PLAN/POLICY

5.1 Strategic Plan

The following strategic objectives in Council's Strategic Plan 2025 are the most relevant to this report:

Objective	Comments
Community	
<i>Our services are accessible to all and respond to changing community needs</i>	No one should be excluded from lodging an application for review because of any difficulties they may have in representing themselves. Council may 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.

<i>People can have a say in decisions that affect them and the key decisions of the Council</i>	Applicants have a right to put their case forward and opportunity to provide relevant documentary evidence as part of the internal review process
Leadership	
<i>Customer service provides a positive experience for people and is based on honesty and transparency</i>	It is important that Council decisions are transparent, fair, objective, consistent and subject to review.
<i>Decision making is informed, based on evidence and is consistent</i>	An internal review will consider the process and evidence (merits) considered in making the original decision, and the basis for the decision reached to ensure that the original decision was fair and reasonable (valid, appropriate, lawful) .

5.2 Organisation Plan

Our Strategic Plan is supported by an Organisation Plan which focuses on five key themes of customer care, learning & growth, future capability and sustainable operations. The key theme most relevant to this policy is sustainable operations, in ensuring that we make consistent, informed decisions which are evidence based.

6. 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.