

**INTERNAL REVIEW OF COUNCIL DECISIONS
 (s270) POLICY**

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1. PREAMBLE

This Policy outlines the process that will be applied when dealing with applications for an internal review of decisions of the Council (the elected body), employees of the Council, and other persons acting on behalf of the Council.

1.1 Background

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).

1.2 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.

1.3 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:

- *Development Act 1993*
- *Dog and Cat Management Act 1995*
- *Electoral Act 1985 and under the Local Government (Elections) Act 1999*
- *Environment Protection Act 1993*
- *Expiation of Offences Act 1996*
- *Freedom of Information Act 1991*
- *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

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- Decisions made under legislative delegations (e.g. *Food Act 2001, SA Public Health Act 2011*)
- Commonwealth Home Support Program matters.

Where legislation provides for the review or appeal of a decision (or where legislation excludes a decision from review) a decision of that type will not be reviewed under this policy.

1.4 Strategic Reference

Culture: Providing customer-centred services

Culture: Supporting excellent, efficient operations

2. PRINCIPLES

2.1 Applicants

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.

2.2 Application process

2.2.1 Applications are to be made in writing 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; and
- any other relevant information.

2.2.2 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

2.2.3 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

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- 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.

2.3 Review process

2.3.1 All parties will have the opportunity to express their point of view, provide relevant information, and respond to issues raised.

2.3.2 The Chief Executive Officer will provide to an appropriate Contact Officer who will acknowledge the applicant's request and be responsible for dealing with the application for review..

The Contact 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.

2.3.3 The role of the Contact 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.

2.3.4 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.

Where the decision is a decision of the elected Council, the Contact 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.

2.3.5 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.

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- 2.3.6 When undertaking the review, the Contact 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.
- 2.3.7 In carrying out a review of a decision, the Contact 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.
- 2.3.8 The Contact 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.
- 2.3.9 Where the Contact Officer's role is only to prepare the matter for Council's review, the Contact Officer must reference the procedural requirements in clause 2.3.6 when preparing reports for Council's consideration.
- 2.3.10 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.

2.4 Procedural Fairness

- 2.4.1 The principles of natural justice will be observed in dealing with all applications.

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2.4.2 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 Contact 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.

2.5 Record keeping

2.5.1 Employees and contractors will keep clear and accurate records of interviews and review actions.

2.5.2 Documentation will be kept safe and secure, and only relevant parties with a genuine interest will have access to the records.

2.5.3 A register of all applications for review will be maintained.

2.6 Reporting

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).

2.7 Review timeframe

2.7.1 An application for review of a Council decision will be formally 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.

2.7.2 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).

Applicants will be kept informed by the Contact Officer about the progress of the review either by email, telephone or letter and advised in writing of the outcome of the review process.

2.8 Outcome of review

2.8.1 Where the review of a decision upholds the applicant's grievance (decision is overturned or varied), a remedy or response will be

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determined which is consistent and fair for both Council and the applicant. The applicant will be advised accordingly.

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.

2.8.2 Any action required will be undertaken promptly, and consideration given to whether changes are required to prevent the situation being repeated.

2.8.3 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.

2.9 Options for Review available to applicants

2.9.1 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.

3. REFERENCES

- 3.1 Legislation
Local Government Act 1999
- 3.2 Other References
Customer Feedback and Complaints Procedure