

Council Policy

Internal Review of Council Decisions



COUNCIL POLICY

 <p>Adelaide Hills COUNCIL</p>	INTERNAL REVIEW OF COUNCIL DECISIONS
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Policy Number:	GOV-01
Responsible Department(s):	Community Capacity
Other Relevant Policies:	<i>Complaint Handling Request for Service Unreasonable Complainant Conduct</i>
Relevant Procedure(s):	<i>Complaint Handling</i>
Relevant Legislation:	<i>Local Government Act 1999</i>
Policies and Procedures Superseded by this policy on its Adoption:	<i>Internal Review of Council Decisions Policy 28.4.17, Item 14.10, 69/17</i>
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INTERNAL REVIEW OF COUNCIL DECISIONS POLICY

1. INTRODUCTION

The purpose of this policy and procedure document is to provide guidelines for how Council will deal with formal requests for internal reviews of Council decisions (including decisions by its employees and other people acting on behalf of Council).

The Adelaide Hills Council recognises the importance of transparency in Council decision-making and the need to provide a fair, objective and consistent process for the review of Council decisions.

In preparing this policy and procedure document Council has had regard to the guideline procedure developed by the South Australian Ombudsman as a result of that Office's audit of Local Government Internal Review of Council Decision Procedures in November 2016.

2. 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 provisions of the *Local Government Act 1999* apply to this policy:

Section 270(1) states that a council must establish procedures for the review of decisions of:

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

Section 270(2) states that the procedures must address at least the following matters:

- The manner in which an application for a review may be made
- The assignment of a suitable person to reconsider a decision under a review
- The matters that must be referred to the council itself for consideration or further consideration
- Notification of the progress and outcome of an application for a review
- The timeframes within which notifications will be made and procedures on a review will be completed
- In the case of applications relating to the impact that any declaration of rates or service charges may have had on ratepayers, to ensure that these applications can be dealt with promptly and, if appropriate, addressed through the provision of relief or concessions under the Act.

Section 270(8) states that a council must, on an annual basis, initiate and consider a report that relates to:

- The number of applications for review made under this section
- The kinds of matters to which the applications relate
- The outcome of applications under this section
- Such other matters as may be prescribed by the regulations.

3. DEFINITIONS

For the purposes of this policy and procedure the following definitions apply.

Act means *the Local Government Act 1999*.

Decision of Council is a formal decision of the Council or a Council Committee, a decision of an employee of Council made under delegation or decisions of another person acting on behalf of Council.

CEO refers to the Chief Executive Officer (including their delegate) of the Adelaide Hills Council

Applicant is a person who lodges a request for the review of a decision.

Merits Review is a process by which a person or body, other than the original decision maker, reconsiders the facts, law and policy aspects of the original decision and determines the correct or preferable decision.

Process Review is a review of the correctness of the procedures followed in making a decision.

A **frivolous** request for a review of a decision includes, but is not limited to, requests that lack seriousness, sense or are submitted without an apparent purpose.

A **vexatious** request for a review of a decision includes, but is not limited to, requests made without sufficient grounds or that are submitted only to cause disruption, delay or annoyance

Sufficient interest means the applicant must have an interest in the subject matter, over and above that of the general public

4. POLICY STATEMENT

Council (including Committees, employees of Council and a person acting on behalf of Council) makes decisions every day which impact on members of the community. It is imperative that these decisions are fair and objective. Equally, there should be an avenue to enable a person to review council's decisions.

An internal review of a Council decision is available under section 270(1) of the Act. This is a mechanism that enables the Council to reconsider the decision making process and all the evidence relied on to make a decision, including new evidence if relevant. The aim of this policy is to ensure a fair, consistent and structured review process for any party dissatisfied with a Council decision. This policy does not and is not intended to exclude other rights and remedies available at law.

An internal review of a Council decision will examine the correctness of the procedures followed in making the decision and, in accordance with this Policy, may also examine the merits of the decision itself.

Council also has processes in place for dealing with customer complaints and requests for service. As a general rule, Council will encourage use of these processes in the first instance as they offer the potential for more immediate informal resolution. Council will attempt to resolve complaints about the actions of the council, employees of the council, or other persons acting on behalf of the Council under its Complaint Handling Policy.

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 the Request for Services 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.

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.

5. MATTERS OUTSIDE THE SCOPE OF THE POLICY AND PROCEDURES

This Policy and Procedure will apply to all applications or requests for review of a Council decision, except for where an alternative statutory process for a review or appeal exists in other legislation.

Examples of other legislation containing statutory review or appeal processes include (but are not limited to):

- External review and appeal processes under the Development Act 1993
- External or internal reviews of decisions made under the Freedom of Information Act 1991
- A decision to issue an expiation notice under the Expiation of Offences Act 1996
- Reviews of orders made under Section 254 of the Local Government Act 1999
- Reviews of prohibition, destruction or control orders made under the Dog and Cat Management Act 1995
- Appeals against litter or nuisance abatement notices under the Local Nuisance and Litter Control Act 2016

Applicants wanting a review of a council decision should check if a specific statutory appeal or review process applies to their matter before proceeding with an application. Matters that fall outside the statutory appeals procedures will be considered for the conduct of a section 270 review on a case-by-case basis, depending on the merits of the individual application.

The purpose of this policy and procedure is to fill the gaps in the law where a complainant otherwise has no statutory right of review.

6. PROCEDURE

The following procedure will apply to any request for a review of a decision of Council:

6.1 Making an application

The review of a Council decision commences at the point where a formal request for a review of a Council decision is received.

- A formal request for a review of a decision must:
 - Be in writing, ideally using the *Internal Review of Council Decisions Application* available on Council's website

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- Be addressed to the CEO (or in the case where the matter is about a decision made by the CEO, the matter will be referred to the Mayor for consideration by the elected Council and this Policy be read accordingly)
 - Provide full details of the decision for which the applicant is seeking a review (including how the decision impacts on their rights and/or interests) and set out clearly and succinctly the reasons for applying for the review
 - 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).
- There is no fee payable for a review of a Council decision.
 - It is essential that no one is excluded from lodging an application for review because of any difficulties they may have in representing themselves. Council staff will 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.

6.2 Acknowledging an application

- The CEO will formally acknowledge in writing all requests for a review of a Council decision within five (5) working days of receiving the request and advise the applicant of the expected timeframe within which a determination will be made in respect of their request for review.
- The CEO will consider all requests for a review and may refuse to assess such an application pursuant to section 270(4) of the Act if:
 - The request is made by an employee of the Council and relates to an issue concerning the employee's employment
 - It appears that the request is frivolous or vexatious
 - The applicant does not have a sufficient interest in the matter – this will be determined on a case-by-case basis.

6.3 Undertaking the review

- Applicants will be treated equally, in accordance with good administrative practice. Council's procedures are designed to ensure that:
 - Every applicant has the opportunity to make an application for review of a decision covered by this procedure
 - An unbiased assessment is undertaken
 - Reviews will be completed as quickly as possible, while ensuring that they are dealt with at a level of authority that reflects their level of complexity
 - Decisions are based on sound evidence
 - Applicants receive information about the outcome of the review
 - Applicants will be afforded procedural fairness.
- The CEO will assess all applicable requests for a review of a Council decision (except those which will be referred to the elected Council) and determine what action, if any, should be taken (including whether an external investigation is necessary).

- The CEO may elect to appoint another officer or external advisor for assessment and/or preparation of a report to assist in the review process. The person appointed to assist with the review must be independent of the original decision being reviewed (i.e. have no prior involvement in the matter). An external advisor may be recommended where the decision under review is complex and/or raises legal questions.
- The CEO will refer a review of a Council decision to Council where the decision being reviewed was made by the elected Council or a Committee. A review of decisions made by the CEO will also be referred to the elected Council in accordance with this Policy.
- The CEO may also decide to refer a review of a Council decision to the elected Council where:
 - The decision being reviewed relates to civic or ceremonial matters
 - The decision being reviewed is in the opinion of the CEO likely to be of interest to the wider community
 - The CEO otherwise considers, in their discretion that the matter warrants consideration by Council.
- Where a review of a Council decision is referred to the Council, the CEO will prepare a report to Council which will include all of the relevant information about the decision being reviewed.
- Where a request for review has been referred to Council the applicant will be advised of the date that the report will be presented to Council and will be given the opportunity to provide a written or verbal submission in relation to the report for Council's consideration.
- In most cases, Council will use its best endeavours to ensure that requests for review will be considered and determined within 20 business days. 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 days, the applicant will be provided with periodic updates on the progress of the review until the review is finalised.
- Except for in extremely limited circumstances, a merits review will be conducted. In those instances where a merits review will not be conducted, a process review will be undertaken and the applicant will be advised of this at the time the review is commenced.

6.4 Natural Justice

- Those that may be affected by a decision will be accorded natural justice, which includes the principles of procedural fairness. As part of the review process all parties with an interest in the matter will have the opportunity to make a written submission expressing their point of view and responding to issues raised, including the provision of any relevant information.
- In undertaking a review, the CEO or Council will review the decision in question to ensure that the original decision maker complied with the following procedural requirements and made the best possible decision in the circumstances having regard to the following:
 - The decision maker had the power to make the decision
 - The decision maker considered all matters which were relevant to the making of the decision at the time and did not take into account matters which were not relevant, as well as any additional relevant information or material provided by the applicant.

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- The decision maker did not exercise a discretion or power in bad faith, for an improper purpose, or while subject to duress or the influence of another person
 - The decision maker had no conflict of interest, bias or perceived bias
 - The decision maker ensured that findings of fact were based on evidence
 - The decision was reasonable
 - The decision maker considered any relevant legislation, policies or procedures
- The details of any request for review will be kept confidential in so far as it is necessary, practicable and appropriate for conducting an effective review process.
 - The applicant will be informed in writing of the outcome of the review (even including where a determination is made that the decision under review be upheld).
 - Adequate reasons will be recorded for all internal review determinations.

6.5 Applications under this policy relating to Rates

- This procedure applies to applications that relate to the impact that any declaration of rates or service charges may have had on ratepayers.
- Council or the CEO will give priority to such applications and consider the impact of rates and services on ratepayers and the provisions available to ratepayers for rate relief or concessions as set out in the Act (e.g. remission or postponement of payment, issuing of fines and interest, particular land use categorisation).
- Specific review mechanisms exist in the Local Government Act 1999 to try the validity of a rate or service charge. This Policy does not apply to such a decision.

6.6 Remedies

- Where the review of a decision under this Policy results in the applicant's contention(s) being upheld, an appropriate remedy will be determined that is reasonable in all the circumstances.
- The remedy chosen will be proportionate and appropriate to the outcome of the review and may include (but is not limited to):
 - Varying or revoking the original decision
 - Returning the situation to its original status (such as not pursuing the construction of something, not implementing the original decision, etc)
 - The provision of an explanation
 - Offering to enter into formal mediation
 - The offering of an apology or admission of fault
 - A change to Council policy, procedure or practice
 - The correction of Council records.
- Where appropriate, the any findings of an internal review will be considered in making improvements to Council's existing policies, practices and procedures.

7. DELEGATION

7.1 The Chief Executive Officer has the delegation to:

- Approve, amend and review any procedures that shall be consistent with this Policy; and
- Make any formatting, nomenclature or other minor changes to the Policy during the period of its currency.

8. AVAILABILITY OF THE POLICY

8.1 This Policy will be available for inspection at the Council's Offices during ordinary business hours and via the Council's website www.ahc.sa.gov.au. Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.

Adelaide Hills Council - Request for S270 Internal Review of Council Decision Form

Customer Details

Name: Date

Residential Address:
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Postal Address:
(if different)

Telephone: (M).....

Email:

Details of Council Decision

Date of Council Decision:

Council Decision:
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Reasons for requesting review:
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How the decision impacts your rights and/or interests:.....
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Signed: Date:.....

Printed Name:.....