

Internal Review of a Council Decision Procedure

Strategic Reference	Objective 4; Collaborative and respectful relationships amongst community, Council Members and Council staff. Strategy 4.3; To continuously strive for open and accountable administration practices.
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Applicable Legislation:	Local Government Act 1999, section 270 State Records Act
Related Policies:	Customer Service Charter Complaints and Compliments Policy Requests for Service Policy Public Interest Disclosure Policy and Procedure Fraud, Corruption, Misconduct & Maladministration Policy
Related Documents:	Requests for Service Procedure Complaints Handling Procedure Application for Decision Review Protocol – Ombudsman Enquiry Procedure <i>Right of Review: An Audit of Local Government Internal Review of Council Decisions Procedures</i> November 2016, (Ombudsman SA) Internal Review of a Council Decision, Model Procedure June 2017, (LGA)

1. Introduction

This Policy and Procedure specifically addresses the manner in which requests for a review of a previous decision of Coorong Council will be dealt with, and provides a fair, consistent and structured process for any party dissatisfied with a decision which has been made by Council or its agents.

The Coorong Council will review certain types of decision in accordance with this Policy and Procedure.

This document sets out:

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- a) the decisions which are subject to review;
- b) the method of applying for a review;
- c) the review process; and
- d) record keeping requirements.

This Procedure is required by section 270(1) of the *Local Government Act 1999* and forms part of the Council's processes for dealing with complaints.

1.1 Council's commitment

Council, its committees, staff and contractors make decisions every day which impact on members of the community. It is imperative that these decisions are fair, objective and subject to review.

Coorong Council is committed to open, responsive and accountable government. This includes providing processes by which citizens adversely affected by a decision of Council can have their grievances considered.

This Procedure will be widely accessible to ensure that customers are fully aware of their right to request the review of a decision and the process that will be followed. Everyone will be treated equally, in accordance with good administrative practice.

Council's procedure is designed to ensure that:

- Every person has the opportunity to make an application for review of a decision covered by this procedure
- An unbiased review is undertaken
- Outcomes of a review are based on sound evidence
- Applicants receive information about the outcome of the review.

2. Customer complaints

This Procedure forms part of the Council's Complaints Handling Procedure

Council has a three (3) tier process for managing customer complaints.

1. Immediate response to resolve the complaint

All staff are empowered to handle complaints in the first instance and it is preferable that a complaint is dealt with promptly at the initial point of contact and at the appropriate officer level.

2. Complaint escalated to a more senior officer

A complaint will be directed to a more senior officer in the Council, where circumstances indicate that the complaint would be more appropriately handled at a higher level. This may occur, for example, where an officer has been involved in the matter that is the subject of the complaint, where the complaint is about an issue that requires a decision to be made at a more senior level, or where a complaint concerns a matter that ranges across more than one Council work area.

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3. Internal review of a Council decision

Internal review of a Council decision will be in accordance with this procedure. This procedure enables the Council to reconsider all the evidence relied on to make the original decision and additional available evidence if relevant. This Procedure 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, such as a complaint about a decision of the Chief Executive Officer (CEO).

An Application for Review should only be made once the other mechanisms under the Complaints Handling Procedure have been undertaken as these may resolve the matter more quickly. As the third tier in Council's complaints handling process, review under this Procedure will generally apply when matters cannot be resolved satisfactorily under the first two tiers.

3. Key Principles

The Policy and Procedure are based on five (5) principles, which are fundamental in the way Council approaches requests for service, complaint handling and reviews of decisions. They are:

1. Fair treatment: which requires impartiality, confidentiality and transparency at all stages of the process
2. Accessibility: to be accessible there must be broad public awareness about Council's policies and procedures and a range of contact options
3. Responsiveness: this will be achieved by providing sufficient resources, well trained staff and ongoing review and improvement of the Council's systems
4. Efficiency: requests and complaints will be resolved as quickly as possible, while ensuring that they are dealt with at a level that reflects their level of complexity
5. Integration of different areas of Council where the matter under review overlaps functional responsibilities.

4. Decisions subject to review

Decisions of the Council, employees of the Council, and other persons acting on behalf of the Council, may be subject to review under this Procedure. The nature of this review is a merits review which could lead to the original decision being affirmed, varied or revoked.

Not all actions by the Council, employees of Council or other person acting on behalf of Council will be a decision. For example, actions taken during the process of decision-making (ie investigations, requests for further information, internal consideration of the matter or referral of the matter to an external adviser) are not decisions. A decision is made when a matter, issue or query is actually determined. Once a matter, issue or query is determined, the decision may be susceptible to review in accordance with this Procedure.

Some decisions made by the Council, a Council employee or on behalf of the Council are subject to review or appeal processes set out in legislation. This procedure cannot override or operate inconsistently with these statutory processes. Consequently where legislation provides for the review of, or appeal from, a type of decision, a decision of that type will not be reviewed under this procedure. Examples include:

- a) objections to valuations made by the Council;

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- b) appeals against orders made pursuant to section 254 of the *Local Government Act 1999*;
- c) appeals against the issuing of litter abatement notices under the *Local Nuisance and Litter Control Act 2016*;
- d) appeals against destruction and control orders issued under the *Dog and Cat Management Act 1995*;
- e) review of an expiation notice under the *Expiation of Offences Act 1996*; and
- f) external review processes under the *Development Act 1993* and the *Freedom of Information Act 1991*.

Where legislation specifically excludes a type of decision from review either expressly or by necessary implication, this Procedure cannot operate inconsistently with that legislation. Similarly, a review under this Procedure could not vary or revoke a decision which has operative effect under legislation from the time the decision is made. For example, some development approvals under the *Development Act* are intended to have operative effect from the time the decision is made and are not capable of being varied or revoked by Council.

Where legislation specifically provides for an internal review process, that process will apply rather than the process set out in this Procedure. For example, internal review of a determination under the *Freedom of Information Act* or withdrawal of an expiation notice issued by the Council under section 16 of the *Expiation of Offences Act*.

5. Applying for a review

5.1 Who can apply?

A person with a sufficient interest in a decision of the Coorong Council, a Council employee or person acting on behalf of the Council, may make a written application for a review of that decision. An application for a review of a decision can be made within six (6) months of the decision being made (unless a longer period for submitting a particular application is approved by Council).

A person who is not the direct subject of a decision may have a sufficient interest in the decision to seek a review under this Procedure. For example, a person may have a sufficient interest in a Council decision regarding the number of dogs which may be kept within a neighbour's property.

5.2 Internal Review Contact Officer

The Internal Review Contact Officer (IRCO) appointed by the CEO is the Director Community and Corporate and is the initial point of contact for Applicants.

The role of the IRCO is to:

- 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 Decision Review;
- acknowledge the receipt of an Application for Decision Review;

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- maintain a register of all Applications for Decision Review received and the outcomes of the Applications;
- outline the timeframes involved and the action to be taken in the first instance;
- undertake a preliminary investigation to determine what actions have already been taken to try to resolve the matter;
- keep the Applicant informed of progress;
- ensure adequate records are maintained; and
- report to Council at prescribed intervals on all Applications lodged for review.

All Applications for Decision Review are to be referred to the IRCO immediately. A person seeking review of a Council decision who attends at the Council's offices personally or by telephone call should be referred to the IRCO. The IRCO will discuss this procedure with the person and indicate that an Application for Decision Review must be lodged in writing (attached at the rear of this Policy).

5.3 Assistance with applying for review

It is essential that no one is excluded from lodging an Application for Decision Review because of any difficulties they may have representing themselves. All Council staff are expected to offer assistance where appropriate and provide it on request, including assistance in documenting the reasons for the review in writing when circumstances warrant.

If necessary, access to interpreters, aids or advocates should be arranged to ensure that an Applicant is treated equitably and has access to the review process.

5.4 Form of application

An Application for Decision Review (attached at the rear of this Policy) must be in writing and set out the reasons for applying for the review (that is, why the Applicant believes that the decision is wrong). Although Council can be expected to have information and material relevant to the matter under review, an Application for Decision Review may also include additional, relevant information or evidence to support the application.

5.5 Council response to an application

The IRCO is responsible for:

- a) determining whether or not the decision is subject to review under this procedure;
- b) working in conjunction with the appropriately delegated officer or external party to determine how the review will be handled;
- c) advising the Applicant of the process to be undertaken and the time of the next contact; and
- d) ensuring the Application is properly lodged and assigned.

Applications for a review of a decision must be responded to within ten (10) business days, acknowledging receipt and advising the Applicant of the expected timeframe for dealing

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with the matter. Council will use its best endeavours to ensure that a review of the decision will be completed within twenty-one (21) business days. However if the decision is to be reviewed by the elected Council, a Council committee or an external investigator reporting to the elected Council or council committee, there may be delays caused by meeting cycle timelines. In more complex cases, a review may take longer.

The Applicant will be regularly informed of progress, either by email, letter or telephone.

The Council is entitled under the *Local Government Act* to refuse to consider an Application for Review if:

- a) the Application is made by an employee of the Council and relates to an issue concerning his or her employment;
- b) it appears that the Application is frivolous or vexatious; or
- c) the Applicant does not have a sufficient interest in the matter.

Where a matter has been referred to the Local Government Association Mutual Liability Scheme (LGAMLS) in respect to a claim or potential claim against the Council or in response to a threat of legal action against the Council, an Application for Review of a decision in connection with that claim or action (including the decision to refer the matter to the LGAMLS) will be vexatious.

5.6 Applications for a review of the impact of rates or services charges

If the Council receives an Application for a review of a decision concerning the financial impact of Council rates or services charges, these will be dealt with as a matter of priority. Where circumstances warrant, Council will consider financial relief or the granting of concessions in line with the provisions of the *Local Government Act* (s270(2)(ca)).

6. Undertaking a review

6.1. Reviewer

The elected Council will be the reviewer:

- when the decision being reviewed was made by a committee of the council or the CEO;
- when the decision relates to civic and ceremonial matters; and
- in other circumstances as determined by the CEO or resolution of the council.

Where the decision is a decision of the elected Council, the reviewer will be an external person or body who will report the outcome of the review to the Council. The Council will consider the outcome of the review and determine whether to affirm, vary or revoke the reviewed decision.

Where the elected Council is not the reviewer, a reviewer will be chosen from the following:

- CEO
- Officer delegated by the CEO
- A panel comprising of Council Members and senior staff

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- The assistance of an external person

6.2. Role of reviewer

The reviewer will undertake a merits review of the decision.

The reviewer should consider all materials and information which were available to the original decision-maker and any additional relevant material and information which has since been provided or become available during the course of the review.

The reviewer will 'stand in the shoes' of the original decision-maker and determine the decision appropriate on the basis of the relevant circumstances and available information and materials.

6.3. Providing 'Procedural Fairness'

The reviewer will observe the principles of procedural fairness (also called 'natural justice') when undertaking the review.

To observe the principles of procedural fairness:

- Giving an applicant a right to put their case forward. This will generally involve giving an applicant the opportunity to provide all relevant documentary evidence, rather than an oral hearing;
- an Applicant is entitled to be informed of the proposed outcome of the review, have the opportunity to make submissions to the reviewer on the outcome and have these submissions taken into account; and
- the reviewer must not have a bias or perceived bias in respect of undertaking the review.
- Ensuring that the reviewer does not have a personal interest in the outcome

6.4. Providing reasons

While there is no statutory requirement to give reasons for a decision, Council will always give reasons to explain the outcome where:

- a decision is not in accordance with a Council Policy;
- a decision is likely to detrimentally affect rights or interests of individuals (or organisations) in a material way; or
- conditions are attached to any approval, consent, permit, licence or other authorisation.

6.5. Refusing an application for review

Council, or a person assigned to consider the Application, 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;
- it appears that the Application is frivolous or vexatious; or

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- the applicant does not have a sufficient interest in the matter.

Refusing an application for review will not be done lightly and reasons for the refusal (see section 6.4) will document the evidence on which a refusal is based. Refused Applications will be recorded into Council's electronic records management system.

6.6. Outcome of review

Where the reviewer is the elected Council, the elected Council should determine whether to affirm, vary or revoke the original decision.

Where the reviewer is a Council employee, the employee may determine whether to affirm, vary or revoke the original decision if authority to make the decision has been delegated to that employee. If the reviewer does not have a delegation enabling the making of the decision, then the reviewer should report the outcome of the review to the elected Council (or delegate) for a determination as to whether the decision should be affirmed, varied or revoked.

Where the reviewer is an external person or body then the reviewer should report the outcome of the review to the elected Council for a determination as to whether the decision should be affirmed, varied or revoked. An external reviewer cannot vary or revoke a decision made by or on behalf of Council.

7. Remedies

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 Applicant. The remedy chosen will be proportionate and appropriate to the failure identified.

As a general principle the Applicant will, so far as possible, be put in the position he or she would have been in, had the decision not been made. This may mean changing a decision. Where circumstances are such that it is not possible to return to the original situation, or to rectify the outcome of the decision, it may only be possible to offer an apology.

The range of other possible outcomes includes:

- an explanation
- mediation
- an admission of fault
- a change to policy, procedure or practice
- a correction of misleading records
- financial compensation, including a refund of any fees
- the waiving of a debt
- the remission of a penalty
- disciplinary action
- referral of a matter to an external agency for further investigation or prosecution.

The remedy or response may be one, or a combination of these actions. The chosen remedy will be proportionate and appropriate to the failure in service and take account of what the Applicant is seeking as an outcome of the review.

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If an apology is required it will be done promptly and the applicant advised that appropriate action will be taken to ensure the problem is not repeated.

Compensation will only be offered in cases where the loss or suffering is considered substantial. The Council itself and the CEO are the only people authorised to offer financial compensation and this will only occur after consultation with the Local Government Association Mutual Liability Scheme.

When advising an Applicant of the outcome of a review, information will also be provided about alternative remedies, including any rights of appeal and the right to make a complaint to an external agency such as the SA Ombudsman.

8. Records management

All documents, notes, photographs and correspondence must be retained and stored in accordance with Council's Records Management protocols as required by section 125 of the *Local Government Act*. All Applications must be recorded in Council's records management system in such a way that the information can also be analysed for service improvement opportunities.

The IRCO will submit a report to Council annually about section 270 Applications for Review of a Decision, including:

- the number of Applications for review made under this procedure;
- the types of matter to which the Applications relate;
- the outcomes of Applications under this procedure; and
- any other matters as may be prescribed by the regulations.

The IRCO will also report on how the outcomes have been used to improve Council's customer service, policies, procedures and practices. This information, as specified in section 270(8) of the *Local Government Act 1999*, will be included in Council's Annual Report.

9. Further Information & Policy Review

This Policy will be reviewed every three (3) years, including within six (6) months following the next periodic regular election.

This Policy and Procedure will be available for inspection at the Council offices listed below during ordinary business hours and available for free download, on Council's internet site: www.coorong.sa.gov.au. To request an electronic copy of this Policy, please email council@coorong.sa.gov.au.

Coorong Civic Centre

95 - 101 Railway Terrace
PO Box 399, Tailm Bend
Phone: 1300 785 277
Fax: 8572 3822

Meningie Information Hub

49 Princes Highway
Meningie

Tintinara Customer Service Centre

37 Becker Terrace
Tintinara

Any grievances in relation to this policy or its application should be forwarded in writing addressed to the Chief Executive Officer of Council.

APPLICATION FOR DECISION REVIEW

In accordance with Section 270 of the *Local Government Act 1999*

Applicant's Name:

Applicant's Address:

Postal Address (if different):

Telephone: (home).....(mobile).....

Email Address:

I request the following decision(s) to be considered for review:

.....
.....
.....

Previous contact person in this matter:

Details of prior actions taken to resolve this matter:

.....
.....
.....
.....

Reasons for requesting decision review:

.....
.....
.....

Additional/Supporting documents attached? Yes / No

Applicant's Signature: Date:

Office Use Only

Received by:..... Date: Referred to:

Applicant Acknowledged and given copy of Procedure?: Yes / No Date: