

Policy Section:	1. Corporate Governance
Policy Name:	Internal Review of a Council Decision
Classification	Mandatory Policy
Adopted:	9 November 2021
Frequency of Review:	Biennial
Last Review:	September 2021
Next Review Due:	September 2023
Responsible Officer(s):	Governance Officer & Chief Executive Officer
Policy Manual File Ref:	CC10/2601
Council File Reference:	CR21/70182
Legislation Authority:	Local Government Act 1999 (the Act), S270
Related Policies:	Complaints Requests for Service Ombudsman Enquiry and Investigation Management Public Interest Disclosure Act 2018
Related Procedures:	Internal Review of a Council Decision Complaints Resolution Complaints Handling - Under Code of Conduct for Council Members Requests for Service

1. INTRODUCTION

- 1.1 This policy specifically addresses the manner in which requests for a review of a previous decision of Council will be dealt with. The procedure relative to this policy provides a fair, consistent and structured process for any party dissatisfied with a decision which has been made by Council or its agents.
- 1.2 Section 270 of the *Local Government Act 1999* requires Council to maintain “policies, practices and procedures” for dealing with requests for service and complaints including a procedure about “the review of decisions of —
 - (a) the council;
 - (b) employees of the council;
 - (c) other persons acting on behalf of the council.”

The nature of this review is a procedural and merits review which could lead to the original decision being affirmed, varied or revoked.

- 1.3 Council has a three tier process for managing customer complaints, set out below, which includes immediate, informal resolution as well as established processes for review by senior staff.

Tier 1 Immediate response to resolve the complaint

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

Tier 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.

Tier 3 Internal review of a Council decision by statutory process

Internal review of a Council decision is available under section 270 of the *Local Government Act 1999* at the request of a complainant. This is a process established by legislation that enables a complainant to request that a Council reconsider all the evidence relied on to make a decision, including new evidence if relevant. This 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, such as a complaint about a decision of the CEO.

- 1.4 Council's detailed Complaints Policy and Procedure is available to the public.

- 1.5 This policy for review of a decision commences at the point where:

1.5.1 A request for the review of a decision is received, or

1.5.2 A complaint escalates to Tier 3 under Council's complaint handling policy.

- 1.6 This policy applies to all Council staff who may be involved in receiving an application for review of a Council decision.

2. KEY PRINCIPLES

- 2.1 This policy is based on five principles, which are fundamental in the way Council approaches requests for service, complaint handling and reviews of decisions. They are:

2.1.1 Fair treatment: which requires impartiality, confidentiality and transparency at all stages of the process

2.1.2 Accessibility: to be accessible there must be broad public awareness about Council's policies and procedures and a range of contact options

2.1.3 Responsiveness: this will be achieved by providing sufficient resources, well trained staff and ongoing review and improvement of the systems

2.1.4 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

2.1.5 Integration of different areas of Council where the matter under review overlaps functional responsibilities.

3. SCOPE

3.1 Application of policy

- 3.1.1 This policy applies when reviewing decisions of Council as outlined below.
- 3.1.2 Council also has defined procedures for dealing with complaints and requests for service. As a general rule, Council will promote these procedures in the first instance as they offer the potential for immediate resolution. An internal review is the third tier in Council's complaints handling process. It will apply:
 - 3.1.2.1 When matters cannot be resolved satisfactorily.
 - 3.1.2.2 When a decision has to be reviewed by the elected Council (see 5.2 Assignment of applications for review).

3.2 Decisions subject to review and making an application

- 3.2.1 A person with a sufficient interest in a decision of the 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 6 months of the decision being made (unless a longer period for submitting a particular application is approved by Council).
- 3.2.2 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.
- 3.2.3 An application for review must be in writing (a form is available on the Town of Gawler website) 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 review may also include additional, relevant information or evidence to support the application.
- 3.2.4 Not all actions by a Council, employees of a Council or other person acting on behalf of a 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 policy and its procedure.
- 3.2.5 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 policy and its 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 policy and its procedure. Examples include:
 - a) objections to valuations made by the Council;
 - b) appeals against orders made pursuant to section 254 of the Local Government Act;

- 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.

3.2.6 Where legislation specifically excludes a type of decision from review either expressly or by necessary implication, this policy and its procedure cannot operate inconsistently with that legislation. Similarly, a review under this policy and its 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.

3.2.7 Where legislation specifically provides for an internal review process, that process will apply rather than the process set out in this policy and its 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.

3.2.8 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, the Office for Public Integrity (OPI) or taking legal action at any time. Note however that 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.

3.3 Assisting with the Application for Review

3.3.1 It is essential that no one is excluded from lodging an application for review because of any difficulties they may have representing themselves. All 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.

3.3.2 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.

3.4 Council's commitment

3.4.1 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.

3.4.2 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.

3.4.3 This policy 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.

3.4.4 Everyone will be treated equally, in accordance with good administrative practice.

4. INTERPRETATION

- 4.1 Alternative Dispute Resolution** includes mediation, conciliation or neutral evaluation as set out in section 271 of the *Local Government Act*.
- 4.2 Applicant** is the party lodging the requests for review. Examples include residents, ratepayers, members of a community group, users of Council facilities and visitors to the area.
- 4.3 Business Day** means a day when the Council is normally open for business, i.e. Monday to Friday, excluding public holidays.
- 4.4 Council** refers to the Town of Gawler
- 4.5 Decision** is a position adopted by Council or its employees. It will generally be a judgement reached after consideration of relevant information.
- 4.6 Decision-maker** refers to the individual or entity responsible for the decision under review.
- 4.7 Employee** includes a person employed directly by the Council in a full time, part time or casual capacity (whether that position is permanent or contractual) and persons providing services to, or on behalf of, the Council even though they may be employed by another party.
- 4.8 Reviewer** refers to the individual or entity responsible for resolution of a request for review of a decision.

5. UNDERTAKING A REVIEW

5.1 Applications for a Review of the Impact of Rates or Services Charges

If 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*.

5.2 Assignment of applications for review

5.2.1 The elected Council will be the reviewer:

- When the decision being reviewed was made by the elected Council, a Committee of the Council or the CEO.
- When the decision relates to civic and ceremonial matters.
- In other circumstances as determined by the CEO or resolution of the Council.

5.2.2 Council is also responsible for determining who will undertake the investigation and the preparation of a report for Council consideration. (This may be the CEO, his/her delegate, or an expert party from outside the organisation.)

5.2.3 Where the elected Council is not the reviewer, a review methodology to suit the nature of the internal review to be undertaken will be chosen from the following:

- Chief Executive Officer.
- A panel comprised of Council Members and Senior Staff.
- A panel of experts external to the organisation.

- The assistance of an external person.

Wherever possible and appropriate, Council will seek to involve an external person or panel to assist with the review, including the enlistment of employees of other Councils.

5.3 Role of reviewer

5.3.1 The role of a reviewer is to review the decision in question to ensure that the decision-maker complied with the following procedural requirements and made the best possible decision in the circumstances:

- 5.3.1.1 The decision was within a power properly conferred on the decision-maker under the relevant Act.
- 5.3.1.2 The decision-maker considered all matters which are relevant to the making of the decision and did not take into account matters which are not relevant to the decision.
- 5.3.1.3 The decision-maker did not make a decision or exercise a power or discretion in bad faith or for an improper purpose.
- 5.3.1.4 The decision-maker ensured that findings of fact are based on evidence.
- 5.3.1.5 Decisions were reasonable.
- 5.3.1.6 Those who may be affected by a decision were accorded procedural fairness, which includes the principles of natural justice.
- 5.3.1.7 The decision-maker properly considered the application of existing policies.
- 5.3.1.8 The decision-maker did not exercise a discretionary power at the direction of another person.

5.4 Refusing an application for review

5.4.1 The Council is entitled under the Local Government Act to refuse to consider an application for review if—

- 5.4.1.1 The application is made by an employee of the council and relates to an issue concerning his or her employment; or
- 5.4.1.2 It appears that the application is frivolous or vexatious; or
- 5.4.1.3 The applicant does not have a sufficient interest in the matter.

5.4.2 Refusing an application for review will not be done lightly and reasons for the refusal will document the evidence on which a refusal is based.

5.4.3 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.

6. REVIEW AND EVALUATION

The effectiveness of this Policy will be reviewed on a biennial basis to ensure that its commitment to the principles of good conduct and standards of behaviour is being achieved.

The Chief Executive Officer will report to Council on the outcome of the evaluation and if relevant make recommendations for amendments, alteration or substitution of a new Policy.

The Policy will not be altered or substituted so as to affect a process already commenced.

The Policy will be reviewed after each general election of Council.

7. FURTHER INFORMATION

Further information about this Policy can be obtained by:-

Telephone: 8522 9211

Email: council@gawler.sa.gov.au

Appointment: Town of Gawler Administration Centre, 43 High Street, Gawler East.

Letter: PO Box 130, Gawler SA 5118

8. AVAILABILITY OF POLICY

The Policy is available for inspection during ordinary business hours at the Council principal office, Town of Gawler Administration Centre 43 High Street, Gawler East or is available on the Council website at www.gawler.sa.gov.au.

A copy of this Policy will be provided to interested parties upon request, for a fee as contained in the Register of Fees and Charges.