Internal Review of Council Decisions Policy

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<th>Approved by</th>
<th>Council (CNC07 200715 CNC28/15-16)</th>
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<td>Request for Service &amp; General Complaints</td>
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<td>Applicable Legislation</td>
<td><em>Local Government Act 1999</em></td>
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<td>Policy</td>
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**Purpose**

The purpose of this policy 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 Town of Walkerville 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.

**Legislative framework and other references**

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.

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 procedure must address at least the following matters:

- Manner in which an application for a receive may be made
- Assignment of a suitable person to reconsider a decision under a review
- Matters that must be referred to the Council itself for consideration or further consideration
- Notification of the progress ad outcome of an application for a review
- 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 provisions of relieve or concessions under the Act.

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.
Definitions

For the purposes of this policy the following definitions apply.

Act – *Local Government Act 1999*

Decision of Council – a formal decision of Council or 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 of the Town of Walkerville

Applicant – A person who lodges a request for the review of a decision

Frivolous or Vexatious Complaints

Frivolous complaints are complaints that are considered trivial or senseless. Frivolous complaints are usually made with the intention of causing a nuisance whilst vexatious complaints are complaints that are made without sufficient grounds only to cause annoyance or harm to the subject of the complaint.

Policy

Council including Committees, employees of Council and people acting on behalf of Council, make decisions every day, which impact on members of the community. It is imperative that these decisions are fair, objective and subject to review.

An internal review of a Council decision is available under section 270 of the *Local Government Act 1999*. This is a process established by legislation that enables a Council to reconsider the decision making process and all the evidence relied on to make a decision, including new evidence if relevant. Requests for a review of a Council decision will apply to decisions made by the Council, an employee of the Council or other persons acting on behalf of the Council. The aim of this policy is to ensure a fair, consistent and structured 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.

Council also has processes in place for dealing with customer complaints and requests for service. As a general rule, Council will encourage the use of these policies and procedures in the first instance as they offer the potential for immediate informal resolution.

Complaints about the actions of the Council, employees of the Council, or other persons acting on behalf of the Council or a request for service will attempt to be resolved via our General Complaints – Request for Service 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, unless this is not appropriate in the circumstances.

Matters outside the scope of the Policy and Procedures

Some Council decisions fall outside the scope of this policy as alternative statutory process for a review or appeal may exist in other legislation. Examples of other legislation containing unique statutory process include:

- *Development Act 1993* and appeals to the Environment, Resources and Development Court
• Freedom of Information Act 1991
• Ombudsman Act 1972
• The Act in respect to a section 255 Order to the Environment, Resources and Development Court
• Expiations of Offences Act 1996
• Codes of Conduct
• Conflict of Interest matters
• Control Order under the Dog and Cat Management Act 1995
• Council By-Laws and Orders
• Industrial Relations
• A section 92 under the South Australian Public Health Act 2011
• Whistleblowers Protection Policy

Matters that fall outside the statutory appeals procedures in these pieces of legislation will be considered for the conduct of a section 270 review on a case-by-case basis on the merits of the individual application. The purpose of this is to fill the gaps in the law where a complainant has no right of review.

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

Making an application:

This policy and procedure for a 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 a Council Decision Application (available on Council’s website)
  - 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)
  - 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 the reasons for applying for the review
  - Be lodged within (6) six 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.

Acknowledging an application:

- The CEO will formally acknowledge in writing all requests for a review of a Council decision within 5 (five) 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 or review.

- The CEO will consider all requests for a review and may refuse to assess such an application, if pursuant to section 270(4) of the Act:
  - 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.

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:
- Decisions are based on sound evidence:
- Applicants receive information about the outcome of the review.

The CEO will assess all applicable requests for a review of a Council decision (except those which will be referred directly to the Council) and determine what action, if any, should be taken (including whether an independent 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 (i.e. have no prior involvement in the matter). An external advisor may be recommended where the decision under review is complex and raises legal questions.

The CEO will refer a review of a Council decision directly to Council where the decision being reviewed was made by the Council or a Council Committee. A review of decisions made by the CEO will be referred to the Mayor.

The CEO may decide to refer a review of a Council decision directly to 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:
- Any other matters at the discretion of the CEO.

Where a review of a Council decision is referred to the Council, the CEO will prepare a report to Council, which will include all the relevant information about the decision being reviewed.

Where a request for a 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.

Those that may be affected by a decision will be treated with procedural fairness, which includes the principles of natural justice. As part of the review process all parties with an interest in a matter will have 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 and did not take into account matters which were not relevant, as well as any additional relevant information or material provided by the applicant
- The decision maker did not exercise a discretion or power in bad faith or for an improper purpose
- The decision maker endured that findings of fact were based on evidence
- The decision was reasonable
- The decision maker considered any relevant legislation, policies or procedures
○ The decision maker did not exercise a discretionary power at the discretion of another person

- The details of any request for a review will be kept confidential as far as it is practicable. When no longer practicable, the applicant will be advised. Where a review is referred to the Council for determination, the Council may consider the matter in confidence where it is lawful and appropriate to do so, subject to one of the grounds under section 90(3) of the Act being satisfied.

- The applicant will be informed in writing of the outcome of the review (even where a determination is made that the original decision under review is upheld).

- Adequate reasons need to be recorded for all internal review determinations.

- Where appropriate, the findings of the internal review will be considered in regard to how Council’s existing practices can be improved.

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.

**Applications under this policy relating to Rates**

Council is aware of its obligations under section 270 of the Act, accordingly, as part of the internal review process in these instances, Council will consider the impact of rates levied on the 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 and issuing of fines and interest).

**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.

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*.

**Reporting on Reviews**

A register will be maintained of all requests for internal reviews received and the outcome of the applications.

In accordance with section 270(8) of the Act, Council will also provide a report in each annual report on:

- 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 regulations

**Availability of Policy**

This policy will be available for inspection at the Council Civic & Community Centre, 66 Walkerville Terrace Gilberton, during ordinary business hours and on Council’s website [www.walkerville.sa.gov.au](http://www.walkerville.sa.gov.au).

Copies will be provided to interested parties upon request for the payment as per Council’s Fee’s & Charges listing

**Review**

The Council will review this policy within 12 months of the next Local Government Election. However, Council has the ability to review and amend this policy at any time.
Application for internal review of Council Decisions

In accordance with Section 270 of the Local Government Act 1999

To comply with Council Policy Internal Review of Council Decisions, all formal applications for an Internal Review of a Council decision must be in writing and addressed to the:

Chief Executive Officer
Town of Walkerville
PO Box 66
Walkerville SA 5081

email: walkerville@walkerville.sa.gov.au

Applicant Details

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<tr>
<th>Title</th>
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Please circle preferred means of contact  Daytime phone / mobile / email

Details of the decision you are requesting be reviewed

Please provide all relevant details, such as the date of the decision, the name of the staff member or department, and any previous contact with us about the subject matter. Please attach copies of any relevant documentation.

_________________________________________________________________________
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Please list your reasons for requesting the review.

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Office Use Only

Date Received _____________________ Record Number _________________________