

COUNCIL POLICY – Internal Review of Council Decisions

Reference Number	714555
Responsible Business Unit	Office of CEO
Responsible Officer	Chief Executive Officer
Legislation	Local Government Act 1999
Relevant Delegations	Chief Executive Officer
Related Policies Management Guidelines Frameworks	Code of Practice – Access to Council and Committees - 676270 Behavioural Management Framework - Elected Members - 682841 Behavioural Management Policy – Elected Members Code of Conduct/Behavioural Management Policy Employees - 679144 Good Governance Framework Risk Management Framework Complaint Management Framework Customer Service Charter
Link to Strategic Plan	Objective 5.3 - Responsive
Council resolution	131.4
Date Adopted	8 May 2023
Review Date	During a Council term
Previous Revisions	10 December 2018, item 217.8 10 April 2017, item 67.2 24 November 2014, item 204.10 20 May 2010, item 1140.17 27 April 2009, item 820.1.4 23 April 2007, item 120.1.8 24 July 2006, item 733.1.5
Available for Inspection	Council's website – www.murraybridge.sa.gov.au Local Government Centre

POLICY STATEMENT

The Rural City of Murray Bridge is committed to transparent decision making processes and to providing access to a fair and objective process for the review of decisions made by the Elected Body or under delegation by Administration or persons acting on behalf of Council.

OBJECTIVES

1. To provide a fair, consistent and structured process for any party dissatisfied with a decision which has been made by the Elected Body or by staff under delegation.
2. To ensure Council provides open, responsive and accountable government by providing processes by which persons can have their grievances considered.
3. To provide options for mediation, conciliation and neutral evaluation to resolve issues.
4. To ensure that decisions relating to complaints are based on an unbiased assessment and sound evidence.

SCOPE

This policy applies to the internal review of a Council decision as is available under Section 270 of the Local Government Act 1999. This is a process established by legislation that enables a Council to reconsider all the evidence relied on to make a decision, including new evidence if relevant.

This policy does not apply where alternative statutory processes are available to the applicant or to an employee regarding their employment conditions

The Chief Executive and/or Council have the right to refuse to deal with any application that is frivolous or vexatious and/or where the applicant does not have sufficient interest in the matter.

PRINCIPLES

- **Fair treatment**, which requires impartiality, confidentiality and transparency at all stages of the process.
- **Accessibility** – to be accessible there must be broad public awareness about Council's policies and procedures and a range of contact options;
- **Responsiveness** – this will be achieved by providing sufficient resources, well trained staff and ongoing review and improvement of the systems;
- **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
- **Integration** of different areas of Council where the matter under review overlaps functional responsibilities.
- **Accountable** – to be effective, equitable, open and honest

APPLICATION PROCESS

Applications for a review of a decision 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
- Date and Detail of the decision to be reviewed. (*Note that decision must have been made within the previous 6 months*)
- A statement outlining the reasons for requesting a review,
- Payment of the Prescribed Fee
- Other information that the applicant considers relevant

Supporting documentation must be provided at the time the application is made. Late documentation will only be accepted under exceptional circumstances and will not be accepted once the decision making process has commenced as this may lead to perception or allegations of bias in the decision making process.

Assistance will be provided to applicants where necessary to help prepare a written application, including the use of an interpreter, providing assistance for people with a disability or referring applicants to an advocate.

The application should be addressed to:

Chief Executive Officer
Rural City of Murray Bridge
PO Box 421
MURRAY BRIDGE S A 5253
Email: Council@murraybridge.sa.gov.au

REVIEW PROCESS

The following principles will apply during the review process

- Principles of natural justice will be observed in dealing with all matters. All parties will have the opportunity to express their point of view, provide relevant information and respond to issues raised.
- Applications for a review of a decision made in excess of six months prior to any communication will be considered in relation to its relevance, new information provided by the applicant and merit at the time the application is made.
- Applicants will be encouraged to participate co-operatively in the review process. However, failure to co-operate will not negate a person's right to seek external review through the South Australian Ombudsman, other legal appeal processes, or the Courts at any time during the internal review process.
- The Chief Executive Officer will advise Elected Members of receipt of a request for internal review and acknowledge the applicant's request and nominate an appropriate Contact Officer who will be responsible for dealing with the application for review (except where, in the opinion of the Chief Executive Officer, an application is considered to be frivolous or vexatious, relates to an alternative statutory appeals process, or where the applicant does not have a sufficient interest in the matter).

The Contact Officer will not include any person 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

CONTACT OFFICER ROLE

1. The role of the Contact Officer is to
 - Explain the procedure to the applicant and advise them of alternative courses of action available including any rights of appeal and the right to make a complaint to an external agency such as the SA Ombudsman.
 - Advise the applicant about the expected timeframe for dealing with the matter and the action to be taken in the first instance.
 - Undertake a preliminary investigation or determine what actions have already been taken to try and resolve the matter.
 - Keep the applicant informed of progress or changes in timeframe
 - Ensure adequate records are maintained
 - Report to Council at regular intervals should the review be taking a significant length of time.
2. The Contact Officer will assess the application, determine the appropriate action and arrange for an independent review if necessary.
3. The following matters will be referred directly to Council for consideration or further consideration. The types of applications that will be referred directly to Council are those regarding:
 - Council or Chief Executive Officer endorsed decisions, objectives and policies.
 - Budgetary matters or evaluation of service delivery matters
 - Civic and ceremonial matters
 - The procedure for Internal Review of Council Decisions or the process applied
 - Issues that are likely to be of interest to the wider community
 - Matters which may involve litigation

- Matter where legal procedures have not been followed, for example, relating to leases and licences and tenders
 - Matters which in the opinion of the Chief Executive Officer, may require mediation, conciliation or neutral evaluation
 - Any other matters at the discretion of the Contact Officer or Chief Executive Officer.
4. If applications for review relate to the impact that any declaration of rates or service charges may have had on ratepayer such applications will be dealt with promptly and, if appropriate, addressed through the provision of relief or concessions under the Act.
5. 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 the best possible decision in the circumstances:
- The decision must be within a power properly conferred on the decision-maker under the relevant Act.
 - A decision maker must consider all matters which are relevant to the making of the decision and not take into account matters which are not relevant to the decision.
 - 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.
 - Decisions must be reasonable.
 - Those who may be affected by a decision must be accorded procedural fairness, which includes the principles of natural justice.
 - 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.

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. The reviewer will make the best decision available on the evidence provided.

This means the reviewer will do more than simply consider whether the decision is legally and procedurally correct. The reviewer will also consider whether a different decision would be better, based on the evidence. The process of merits review, as described above, will typically involve a review of the facts that support a decision, including any new evidence that may come to light.

6. Where the Contact Officer's role is only to prepare the matter for Council's review, the Contact Officer must draw their attention to matters referred to in item 5 above when preparing reports for Council's consideration.
7. Council will be advised in all circumstances in which the Contact Officer or Chief Executive Officer is of the opinion that the decision of Council should be varied.
8. Matters may also be dealt with through independent mediation, conciliation or neutral evaluation, where both parties agreed that his course of action is appropriate, and where the associated costs will be shared equally between Council and the applicant. These processes may run concurrently with a review, where appropriate. The Contact Officer will discuss this option with applicants where relevant.
9. 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 LGA Mutual Liability Scheme with summary information about the review within 30 days of the conclusion of the matter.

PROCEDURAL FAIRNESS

Council will observe the following principles of procedural fairness (also called 'natural justice') when exercising its statutory powers which could affect the rights and interests of individuals:

- Given 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.
- Ensure that the reviewer does not have a personal interest in the outcome (is not biased)
- Act only on proper evidence that is capable of proving the case.

RECORD KEEPING

Employees will keep clear and accurate records of interviews and review actions, focussing on factual information. Documentation will be kept safe and secure and other relevant parties with a genuine interest will have access to the records.

Whilst not required by law, Council will endeavour to ensure that the reasons for the Contact Officer's decisions are provided to the applicant. Council will always give reasons to explain a revised decision where:

- A decision is not in accordance with published 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.

The Chief Executive Officer's delegate ¹ will maintain a register of all applications for review received (and their outcomes) during each financial year, and provide a report on use of the Internal Review of Council Decisions process in Council's Annual Report in accordance with Section 270(8) of the Local Government Act 1999 along with information on any changes/improvements to Council processes.

REVIEW TIMELINE

- An application for a review of a Council decision will be formally acknowledged within 5 working days of receipt, including advice to applicants about the expected timeframe for dealing with the matter.
- In most circumstances applications for review will be considered within 21 days, although in some circumstances it may take longer. However, in all cases, applicants will be kept informed by the Contact Officer about the progress of the review, and advised in writing of the outcome of the review procedure and process.
- If applications for review are not resolved to the satisfaction of the applicant, applicants will be advised by the Chief Executive Officer or delegate² of other options for review, such as the State Ombudsman, legal advice and/or the courts

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 the applicant. The remedy chosen will be proportionate and appropriate to the failure identified and may include (but is not limited to) such things as:

¹ The Chief Executive Officer has appointed the Executive Officer as his delegate

² The Chief Executive Officer has nominated the Executive Officer as his delegate

- Returning the situation to its original status (such as not pursuing the construction of something, not implementing the original decision etc)
- An explanation
- Mediation
- An apology or admission of fault
- A change to policy, procedure or practice
- A correction to Council records
- Financial compensation, including a partial or full refund of fees
- The waiving of a debt
- The remission of a penalty or remedial action
- Disciplinary action
- Referral of a matter to an external agency for further investigation or prosecution

Any action required will be undertaken promptly and consideration given as to whether system or policy changes are required to prevent the situation being repeated.

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.

INTERNAL REVIEW OF COUNCIL DECISIONS



LOCAL GOVERNMENT ACT, 1999 APPLICATION FOR REVIEW OF COUNCIL DECISION *Pursuant to Section 270 of the Local Government Act 1999*

**Chief Executive Officer
Rural City of Murray Bridge
PO Box 421
MURRAY BRIDGE. S.A. 5253.**

DETAILS OF REVIEW OF DECISION SOUGHT	
Council Meeting Date & item number or	
Decision by Officer – Name / Date	

Applicant's Details:

Name of Person(s) making representation	
Postal/Email Contact Address	
Telephone Contact	
Nature of Interest affected by Decision <i>(eg adjoining resident, owner of land in the vicinity, or on behalf of an organisation or company)</i>	
Reason for Review of Decision	
The issues raised by this review would be overcome by the following action.	
Prescribed Fee Payment	Council Receipt Number

If there is insufficient space please attach typewritten sheets

Please indicate in the appropriate box whether or not you wish to be involved in mediation or preliminary discussions in respect to this submission	<input type="checkbox"/> I do NOT wish to be involved <input type="checkbox"/> I desire to be involved personally <input type="checkbox"/> I will be represented by
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Signed:.....

Date:.....

OPTIONS FOR REVIEW AVAILABLE TO APPLICANTS

The following diagram illustrates the review processes available to the applicant

