

# THE BAROSSA COUNCIL

## INTERNAL REVIEW OF COUNCIL DECISION POLICY



<b>Corporate Plan Link:</b>	6.2 Ensure that Council's policy and process frameworks are based on principles of sound governance and meet legislative requirements.		
<b>Policy Owner:</b>	Chief Executive Officer	<b>Previous Approval Date(s):</b>	20/11/2012; 21/10/2015; 17/10/2017
<b>Document Control Officer:</b>	Governance Advisor	<b>Current Approval Date:</b>	20/08/2019
<b>HPE Content Manager Ref:</b>	15/32472[v2]	<b>Next Review Date:</b>	1/09/2023

### 1. Purpose

- 1.1 The Barossa Council ("Council"), which includes its committees, employees, contractors and Elected Members, make decisions which impact on members of the community. It is imperative that these decisions are fair, objective and subject to review.
- 1.2 Council is committed to open, responsive and accountable government. This includes providing processes by which those who believe they have been adversely affected by a Council decision can have their complaints considered.
- 1.3 Section 270 of the *Local Government Act 1999* ("the Act") 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."

Accordingly, this Policy provides for a procedurally fair, consistent and structured review for any person alleging adverse impact as a result of a decision made by Council or its delegates.

### 2. Scope

#### 2.1 When decisions are subject to review under this Policy

- 2.1.1 This Policy and its supporting *Internal Review of a Council Decision Process* commence where a written application for an internal review of a decision, pursuant to Section 270 of the Act is received by Council, or a complaint

escalates in accordance with Council's *Customer Service Policy* and supporting Processes.

- 2.1.2 Decisions of Council, employees of Council and other persons acting on behalf of Council, may be subject to review under this Policy.
- 2.1.3 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 open to review in accordance with this Policy.
- 2.1.4 The nature of this review is both a merits review and process review which could lead to the original decision being affirmed, varied or revoked.

## 2.2 When decisions are not subject to review under this Policy

### 2.2.1 Council action not a decision

Not all actions by Council, its employees or another person acting on behalf of Council will be a decision - and therefore cannot be reviewed. 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.

### 2.2.2 Other legislation governs review of specific type of decision

Some decisions made by Council, its employees or on behalf of Council are subject to other review or appeal processes set out in legislation. This Policy cannot override or operate inconsistently with those legislative processes. So 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.

Examples include:

- a) objections to valuations made by the Council;
- 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*.

### 2.2.3 Other legislation requires specific internal review process

Where legislation provides for a specific way to conduct an internal review process, that process will apply rather than this Policy.

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* will be conducted in accordance with those legislative processes.

#### 2.2.4 Review cannot occur in the circumstances

Some decisions made by Council, its employee or on behalf of Council are not subject to *any* review according to either express legislation or by necessary implication where a decision has an immediate 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.

#### 2.2.5 Other Council processes govern review

In the absence of legislation, where other Council protocols require certain appeal processes, those processes will apply rather than this Policy and supporting process. For example:

- Employment related matters which are conducted in accordance with the Council's Enterprise Agreement and Human Resources Framework
- Commonwealth Home Support Program Services, where complaint processes are defined in relevant contracts.

#### 2.2.6 Matters that are frivolous or vexatious, related to employment, or where the applicant does not have sufficient interest in the matter

In accordance with section 270(4) of the *Local Government Act 1999*, 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 Council and relates to an issue concerning his or her employment – these types of matters will be managed in accordance with Council's Human Resource Management Policy, and associated policies and processes; or
- It appears that the application is frivolous or vexatious; or
- The applicant does not have a sufficient interest in the matter.

### 2.3 **Alternative methods of resolution**

While Council prefers to work with applicants to resolve requests for internal review promptly and effectively, an applicant will always retain the right to seek other forms of resolution, such as to contact the Ombudsman or the Office for Public Integrity, or to take legal action at any time.



3.	<b>Definitions</b>
<b>Alternative Dispute Resolution</b>	Includes mediation, conciliation or neutral evaluation as defined in Section 271 of the <i>Local Government Act</i> .
<b>Applicant</b>	The party lodging the request for internal review. Examples include residents, ratepayers, members of a community group, users of Council facilities and visitors to the Council area.
<b>Decision</b>	A position adopted by Council or its delegate after consideration of relevant information.
<b>Decision-maker</b>	Council or delegate responsible for the decision under internal review.
<b>Delegate</b>	A person or committee who has been given power by the Elected Body in an Instrument of Delegation to make a decision on behalf of the Elected Body.
<b>Electronic Document and Records Management System</b>	(EDRMS). An automated system used to manage the creation and management of physical and electronic documents and records, improving work-flow, and providing evidence of business activities.
<b>Elected Body</b>	The Mayor and Elected Members meeting in their decision-making capacity.
<b>Employee</b>	Includes a person employed directly by Council in a full time, part time or casual capacity (whether that position is permanent, voluntary or contractual) and an authorised person who has been appointed subject to legislation.
<b>External Review</b>	A merits and/or process review by a person or an entity outside of The Barossa Council, eg the Ombudsman, of a decision that was made by the Elected Body or its delegate.
<b>Internal Review</b>	A merits and/or process review undertaken by a person or entity that is part of The Barossa Council or an independent reviewer, of a decision that was made by the Elected Body or its delegate.
<b>Internal Review Contact Officer (IRCO)</b>	The initial point of contact for applicants seeking an internal review.
<b>Merits Review</b>	A process by which a person or body, other than the primary decision maker, reconsiders the facts, law and policy aspects of the original decision and determines the correct or preferable decision.
<b>Process Review</b>	A review of the correctness of the processes followed in making a decision.
<b>Procedural Fairness</b>	<p>Is concerned with the procedures used by a decision-maker, rather than the actual outcome reached. It requires a fair and proper procedure be used when making a decision and due regard to a fair approach to those involved/impacted by a decision. The rules of procedural fairness require:</p> <ul style="list-style-type: none"> <li>• a hearing appropriate to the circumstances;</li> <li>• lack of bias;</li> <li>• evidence to support a decision; and</li> <li>• inquiry into matters in dispute</li> </ul>
<b>Reviewer</b>	The delegate responsible for conducting a review of a Council decision.

## 4. Policy Statement

4.1 This Policy is based on five key principles:

- *Fair treatment*: which requires impartiality, confidentiality and transparency at all stages of the process;
- *Accessibility*: through broad public awareness about Council's policies and processes and a range of contact options, any person can contact Council;
- *Responsiveness*: through the provision of sufficient resources, well trained staff and ongoing review and improvement of Council's system;
- *Efficiency*: through prompt resolution at an organisational level that reflects the level of complexity; and
- *Co-ordinated approach across Council teams* where the matter under internal review overlaps the responsibilities of various teams.

4.2 Additionally, Council encourages Alternative Dispute Resolution where appropriate and such methods will be undertaken in accordance with Section 271 of the *Local Government Act*.

### 4.3 Application under this Policy relating to Rates

If Council receives an application for an internal review of a decision concerning the financial impact of Council rates or services charges, these will be dealt with promptly. Where circumstances warrant, Council will consider financial relief or the granting of concessions in line with the provisions of the *Local Government Act* (eg remission or postponement of payment, issuing of fines and interest, particular land use categorisation).

Council cannot review its decision relating to the setting and declaration of rates.

### 4.4 Remedies

- 4.4.1 Where the internal review upholds the applicant's complaint, a 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 any issues identified and take account of what the applicant is seeking as an outcome.
- 4.4.2 As a general principle, the applicant will, so far as reasonably practicable, be put in the position he or she would have been in, had the original decision not been made.
- 4.4.3 Only the Elected Body itself and / or the CEO are authorised to offer financial compensation in cases where there is a loss that is considered substantial and this will only occur after consultation with the Local Government Association's Mutual Liability Scheme.



**5. Supporting Process**

Internal Review of Council Decision Process

**6. Related Policies**

Customer Service Policy

**7. Legislation and References**

Sections 270 and 271 Local Government Act 1999

Local Government Association: Internal Review of a Council Decision: Model Procedure (June 2017)

Ombudsman SA: Right of Review: A Guideline Policy and Procedure for Councils (June 2017)

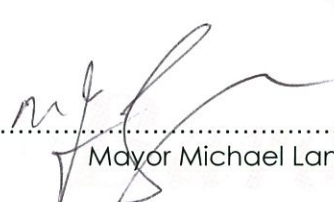
**8. Review**

8.1 This Policy will be reviewed by the Document Control Officer in consultation with the relevant stakeholders, within four (4) years or more frequently if legislation or Council's need changes.

**9. Further Information**

9.1 This Policy is available on Council's website at [www.barossa.sa.gov.au](http://www.barossa.sa.gov.au). It can also be viewed electronically at Council's principal office at 43-51 Tanunda Road, Nuriootpa and all Council branches, during ordinary business hours. A copy of this Policy can be obtained at those venues upon payment of a fixed fee.

9.2 Complaints regarding this Policy or its application can be made to the Customer Service team on 8563 8444 or [barossa@barossa.sa.gov.au](mailto:barossa@barossa.sa.gov.au) at first instance, who will refer you to the most appropriate officer according to Council's *Complaints Handling Policy* (see clause 9.1 above for availability).

Signed:  .....  
Mayor Michael Lange

Dated: 20 August 2019 .....

