

THE BAROSSA COUNCIL

INTERNAL REVIEW OF COUNCIL DECISION PROCESS



Policy Link:	Internal Review of Council Decision Policy		
Process Owner:	Director, Corporate Services and Business Innovation	Previous Approval Date(s):	17/09/2013 21/10/2015 17/10/2017 21/08/2018 20/8/2019
Document Control Officer:	Manager Corporate Services	Current Approval Date:	19/07/2022
HPE Content Manager Ref:	15/42710	Next Review Date:	1/09/2023

1. Overview

This Process specifically outlines:

- how and when an applicant can request an internal review of a Council decision; and
- the roles and responsibilities of the Council administration, the Internal Review Contact Officer, the Reviewer and the Elected Members to affect a fair, consistent and structured approach in dealing with each request.

2. Core Components

Complaints Handling Framework and when to use the Internal Review Process
 Applying for an Internal Review
 Acknowledging an Internal Review Application
 Commencing the Preliminary Investigation
 Assignment of Application to Reviewer
 Review Considerations
 After the Review

3. Definitions	
Alternative Dispute Resolution	Includes mediation, conciliation or neutral evaluation as defined in Section 271 of the <i>Local Government Act</i> .
Applicant	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.
Business Day	A day when the Council is normally open for business, i.e. Monday to Friday, excluding public holidays.
Council	The Barossa Council comprising the Mayor, Elected Members and Administration.
Decision	A position adopted by Council or its delegate after consideration of relevant information.
Decision-maker	Council or its Delegate responsible for the decision under Internal Review.

Delegate	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.
Electronic Document and Records Management System	(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.
Elected Body	The Mayor and Elected Members meeting in their decision-making capacity.
Employee	Includes a person employed directly by Council in a full time, part time or casual capacity (whether that position is permanent, voluntary or contractual).
Executive Leadership Team (ELT)	ELT is the senior internal administrative committee comprising those appointed to a position of Director and the Chief Executive Officer.
External Review	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.
Internal Review	A merits and/or process review by a person or entity that is part of The Barossa Council, of a decision that was made by the Elected Body or its Delegate.
Internal Review Contact Officer	(IRCO). The initial point of contact for applicants seeking an internal review.
Merits Review	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.
Process Review	A review of the correctness of the processes followed in making a decision.
Procedural Fairness	Is concerned with the procedures used by a decision-maker to reach the decision, rather than the actual outcome reached. It requires a fair and proper process 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: <ul style="list-style-type: none"> • a hearing appropriate to the circumstances; • lack of bias; • evidence to support a decision; and • inquiry into matters in dispute.
Reviewer	The delegate responsible for conducting a review of a Council decision.
Worker	A person is a Worker if the person carries out work in any capacity for a person conducting a business or undertaking, including work as; <ol style="list-style-type: none"> a) An employee; or b) A contractor or sub-contractor; or c) An employee of a contractor or sub-contractor; or d) An employee of a labour hire company who has been assigned to work in the person's business or undertaking; or e) An outworker; or f) An apprentice or trainee; or g) A student gaining work experience; or h) A volunteer of Council; or i) A person of a prescribed class. <p>[as defined in the WHS Act 2012 (7)].</p>

4.1 Complaints Handling Framework and when to use this Internal Review Process

Wherever practicable, customer complaints regarding a Council decision should be referred for immediate resolution to Council's *Customer Service Policy and Complaint Handling Process*.

The *Complaint Handling Process* consists of three tiers to manage and resolve complaints:

4.1.1 Immediate response to resolve the complaint

All Workers 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 Worker level.

4.1.2 Complaint escalated to a more senior Worker

A complaint will be directed to a senior Worker in the Council, where the complaint would be better handled at that level. This may occur, for example, where a Worker 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 team.

4.1.3 Internal review of a Council decision

An internal review will generally apply when matters cannot be resolved under the other two tiers.

Internal review of a Council decision enables the Council to reconsider all the evidence relied on to make the original decision, and additional available evidence if relevant.

However, a referral *directly to this third tier* will occur when a decision was:

- made by the Elected Body; or
- referred by the applicant directly to the Ombudsman and the Ombudsman has referred the decision back to the Council for an internal review under Section 270 of the *Local Government Act 1999* ("the Act").

In such cases, the complaint must be dealt with in accordance with this Process.

However, subject to Council's *Internal Review of Council Decisions Policy* and this Process, applicants may use the section 270 Internal Review mechanism at any time to review a decision made by Council or on behalf of Council.

4.2 Applying for a review

4.2.1 Who can apply for a review

A person with a sufficient interest in a decision of Council, or its delegate, may make a written application for a review of that decision.

A person who is not the direct subject of a decision may still have a sufficient interest in the decision to seek a review under this Process. 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.

4.2.2 Timeframe to apply

An application for a review of a decision must be made within 6 months of that original decision being made.

However, in exceptional circumstances an application for internal review which is lodged outside of this 6 months may still be considered for internal review by the Council or CEO, as the case may be.

4.2.3 Assistance for the applicant – Internal Review Contact Officer

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

An Internal Review Contact Officer (IRCO) is appointed by the CEO as the initial point of contact for applicants. The IRCO will be the Governance Advisor or in their absence, a delegate appointed by the CEO.

The IRCO may assist an applicant document their reasons for seeking an internal review, in addition to arranging access to interpreters, aids or advocates to ensure that an applicant is treated equitably.

A person seeking review of a Council decision who attends at the Council's offices personally or by telephone call, and all written applications for review should be immediately referred to the IRCO.

The role of the IRCO is to:

- explain the process to the applicant and explore alternative options to resolve the matter, such as mediation or conciliation prior to an application for review where possible;
- acknowledge the receipt of an application for review;
- maintain a register of all applications for 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 whether the matter falls within the scope of the Policy and Process and what actions have already been taken to try to resolve the matter;
- keep the applicant informed of progress
- if the matter does not fall within the scope of the Policy and Process, to inform the applicant, and provide alternative avenues of review or appeal, where applicable;
- ensure adequate records are maintained; and
- report to Council at prescribed intervals on all applications lodged for review.

4.2.4 How to apply for a review

While there is no standard template that the applicant needs to use, he or she must set out in writing:

- the decision they are seeking to have reviewed and their interest in that decision;
- the reasons why they believe the decision is wrong;
- what outcome is sought; and
- their daytime contact details.

Although Council can be expected to have information relevant to the matter under internal review, an application may also include new evidence to support the application.

Applications must be made in writing and addressed to the Internal Review Contact Officer and forwarded marked confidential via:

- post to: The Barossa Council, PO Box 867, Nuriootpa SA 5355
- email to: barossa@barossa.sa.gov.au
- fax to: 8563 8461
- in person at the Nuriootpa Office at 48-51 Tanunda Road, Nuriootpa SA 5355 or any of the Council branches at Angaston, Lyndoch, Mount Pleasant and Tanunda.

4.2.5 Cost to apply for a review

The application for review must be accompanied by the payment of the prescribed fee set by the Minister pursuant to Section 270(3) of the Local Government Act.

The application for review will not be commenced until payment is received.

4.3 **Acknowledging an Application for Review**

The IRCO will confirm receipt of the internal review application within 5 business days and also advise the applicant of the expected timeframe for processing the matter where possible.

4.4 **Commencing the Preliminary Investigation**

4.4.1 Within 5 business days of receipt of the internal review application, the IRCO will:

- establish an EDRMS container with agreed restricted access;
- assess whether the application falls within the scope of the Policy and Process and if the matter does not fall within the scope of the Policy and Process, inform the applicant, and provide alternative avenues of review or appeal;
- meet with the CEO to determine a reviewer or if the decision under review was made by the CEO, then with the Mayor or in his/her absence, the Deputy Mayor, to advise of the process (see paragraph 4.5 below);
- create a summary report using the *Section 270 Review Record of Investigation* template to provide to the appointed reviewer; and
- outline the resources expended to date within the *Section 270 Assessment of Resources Schedule*.

4.4.2 The IRCO and reviewer will use their best efforts to finalise an internal review within 21 business days. However if the decision is to be reviewed by the Elected Body, a

committee, or an external panel or party there may be delays caused by meeting cycle timelines. In more complex cases, an internal review may take longer.

- 4.4.3 Except where an external party has been appointed as reviewer, the IRCO will regularly inform the applicant of progress, either by email, letter or telephone. The IRCO will record all such contact in the *Section 270 Review Record of Investigation and Assessment of Resources* templates. Where an external party has been appointed as the reviewer, the external party must inform the applicant of progress either directly (preferred) or if this is not possible, via the IRCO.

4.5 Assignment of Application to Reviewer

4.5.1 CEO, Director or Manager as reviewer

Where the decision was made by an Employee of Council (excluding the CEO), the IRCO and CEO will together determine who will be the reviewer. In this case, the reviewer will generally be one of the Directors who have no conflict or previous dealings with the complaint. If this is not possible, a member of the Organisational Management Group will be appointed as the reviewer.

Alternatively but not ordinarily, the CEO may be the reviewer, however, the CEO cannot review a decision he or she has made and such would be referred to the Elected Body.

Also see special circumstances at paragraph 4.5.3 below where an external party would be appropriate.

The IRCO will meet with the reviewer as soon as possible after his or her appointment to discuss the initial investigation, completion of the *Assessment of Resources Schedule and Summary Investigation Report and Findings* and refer the reviewer to the overarching Policy and this Process. In special circumstances or where an external reviewer is appointed, the IRCO may brief the external reviewer by email and, instead of using the *Summary Investigation Report and Findings*, refer to the external reviewer's report.

4.5.2 Elected Body as reviewer

The Elected Body will be the reviewer when the decision being reviewed:

- was made by a Council Committee or the CEO and;
- relates to civic and ceremonial matters and/or;
- can potentially impact a significant proportion of people and/or stated policy positions of Council and/or;
- would be assigned for internal review to an entity or person who would be otherwise conflicted and/or;
- in other circumstances as determined by the CEO or resolution of Council.

In this situation, the IRCO will undertake the practical steps of the internal review regarding facilitation and investigation and complete the supporting documentation outlined in paragraph 4.4 above, to present to the Elected Body for its consideration and decision as reviewer. Where the original decision was made by the Council or a Council Committee, the IRCO will do this in conjunction with the CEO.

Where a request for review has been referred to Council, the applicant will be advised of the date that the report will be presented to the Council and will be given the opportunity to provide a written or verbal submission in relation to the

report for Council's consideration.

4.5.3 External Party as reviewer

Where the decision:

- is a decision of the Elected Body; and/or
- has industry-wide policy impact; and/or
- requires specialist knowledge but Employees with the specialist knowledge have an identified conflict of interest in the matter; and/or
- has significant political controversy

the IRCO will make recommendation to the CEO to refer the application to an expert party / panel together with an estimate of costs. The CEO at his or her discretion will determine whether it is appropriate in the circumstances to appoint an external party / panel as reviewer, and approve the estimate of costs in accordance with Council's Procurement Policy and supporting processes. Once the CEO has determined that this should occur, and confirmed the IRCO is authorised the necessary expenditure to brief the experts, the IRCO can provide the necessary documentation to brief the expert party / panel.

The IRCO will be seeking a recommendation(s) from the expert party / panel which will then be referred back to the Elected Body for a final determination on the review.

The IRCO may consult with the Local Government Association to obtain the name or names of a recommended expert party or expert parties or panel and refer such for approval by the CEO or Elected Body.

The budget line to fund the expert party / panel will be paid from the budget of the Directorate which made the decision under review and where necessary, a budget adjustment made to cover unbudgeted costs.

4.6 **Review Considerations**

4.6.1 In carrying out an internal review of a decision, the reviewer will consider the merits of all the materials and information that were before the original decision-maker at the time of the decision and any additional relevant information or material provided by the applicant or which has become available during the course of the review.

4.6.2 The reviewer will consider whether the original decision is legally and procedurally correct having regard to the following (where relevant and not restricted to), that the original:

- decision maker had the power to made the decision;
- decision maker considered all the matters which were relevant to the making of the decision at the time and did not take into account matters which were not relevant;
- decision maker did not exercise a discretion or power in bad faith, for an improper purpose or while subject to duress or the influence of another person;
- decision maker had no conflict of interest, bias or perceived bias;
- decision maker ensured that the findings of fact were based on evidence;
- decision was reasonable; and
- decision maker considered any relevant legislation, policies or processes.

The reviewer will also consider whether a different decision based on the evidence available or new evidence provided or found provides an improved outcome.

4.6.3 Refusal to consider an application

In addition to those matters which fall out of the scope of the overarching Internal Review of Council Decision Policy, Council or the CEO as the case may be is entitled under the *Local Government Act* to refuse to consider an application for review if:

- a) the application is made by a Council Employee and relates to an issue concerning his or her employment;
- b) it appears that the application is frivolous or vexatious; or

[Note that 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].

- c) the applicant does not have a sufficient interest in the matter; or
- d) the application for an internal review has been made later than 6 months from when the applicant was advised of the original decision - unless there are exceptional circumstances for Council, or the CEO as the case may be, to allow an internal review process.

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.

4.6.4 Providing Procedural Fairness

The reviewer will observe the principles of procedural fairness when undertaking the review so that:

- an applicant is entitled to put forward information and materials in support of the application for review;
- an applicant is informed of the proposed outcome of the review, has 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 when undertaking the review.

4.6.5 Determination of review

When the reviewer is:

- the Elected Body – it should determine whether to affirm, vary or revoke the original decision;
- a Council Employee - they may determine whether to affirm, vary or revoke the original decision if authority to make the decision has been delegated to them. 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 Body (or delegate) for a determination as to whether the

decision should be affirmed, varied or revoked;

- an external person or body –
 - if the original decision was made by the CEO, Council Committee Elected Body, then the external person or body should report their recommendation(s) from the review to the Elected Body for a determination as to whether the decision should be affirmed, varied or revoked.
 - If the original decision was made by an Employee or a person acting on behalf of Council who is not the CEO, and the power to make the original decision has been delegated by the Elected Body to the CEO, then the external person or body should report their recommendation(s) from the review to the CEO for a determination as to whether the decision should be affirmed, varied or revoked.

In the event that the power to make the original decision has not been delegated to the CEO (i.e. if it has been delegated to an Employee or Council officer directly etc.), or the CEO has a conflict of interest in the matter then the external person or body should report their recommendation(s) from the review to a senior Worker who has been delegated the power to make the original decision for a determination as to whether the decision should be affirmed, varied or revoked.

Note: an external reviewer cannot vary or revoke a decision made by or on behalf of Council.

4.6.6 Remedies

Remedies are available to the reviewer, if it is determined that the original decision was incorrect either legally, procedurally or meritoriously, or that an improved outcome can be determined, in terms of one or more as follows,:

- an explanation
- an admission of fault and, where reasonably practicable, a change of decision
- a recommended change to policy, process or practice*
**note: any changes are ultimately a decision for the Council or CEO, depending on the relevant delegations. The reviewer should liaise with the CEO and/or ELT at the earliest opportunity to make them aware of any potential recommendation and discuss the impact on Council resources should the change be implemented.*
- a correction of misleading records
- financial compensation including a refund of any fees**
***note: only the Elected Body and the CEO are authorised to offer financial compensation in cases where there is a loss that is considered substantial. This will only occur after consultation by the IRCO with the Local Government Association Mutual Liability Scheme at the earliest possible opportunity in the investigation.*
- the waiving of a debt
- the remission of a penalty
- disciplinary action under the relevant Code of Conduct, where appropriate
- referral of a matter to an external agency for further investigation or prosecution if it involves allegations of fraud / corruption

- apology***
 ***note: where circumstances are such that it is not reasonably practicable to return the applicant to his/her original situation, or to rectify the outcome of the decision through application of the above remedies, it may only be possible for the reviewer to recommend that an apology be offered.
 If an apology is required and then approved in a resolution by the Elected Body (as reviewer) or by the CEO (if a Director or Manager is the reviewer), it will be included within the determination letter and the applicant will be advised that appropriate action will be taken to prevent the problem from being repeated.

To support development of a potential remedy, the reviewer may recommend mediation, conciliation or neutral evaluation.

4.6.7 Reporting decision of review to the applicant

Where the Elected Body is the reviewer, the IRCO on its behalf will:

- prepare the *Summary Investigation Report and Findings* and determination letter to reflect the resolution and forward it to the applicant within 5 days of the Council meeting and
- provide information about alternative remedies, including any rights of appeal, the right to seek an external review by the Ombudsman or to make a complaint to the Office for Public Integrity.

Where an Employee, including the CEO is the reviewer:

- the reviewer will use the relevant content of the *Summary Investigation Report and Findings* to draft a provisional determination letter and provide this to the IRCO to forward to the applicant with a request for a response for further feedback / new information within 10 business days; and
- if the applicant provides a response, the reviewer must take into consideration any new information, response or feedback provided.
- if the applicant provides no further information within that time, the IRCO will advise the reviewer so that they can confirm the provisional determination in writing, along with information about alternative remedies, including any rights of appeal, the right to seek an external review by the Ombudsman or to make a complaint to the Office for Public Integrity.

Where an external panel / body is the reviewer, the reviewer must provide their full draft report of their provisional determination to the applicant and allow a reasonable opportunity for the applicant to provide a response to the draft report, further feedback or any new information. Any response, further feedback or new information provided by the applicant should be considered by the external panel / body prior to issuing their final report.

Where there are legal or other reasons that warrant confidentiality in relation to the full draft report or *Summary of Investigation Report and Findings*, either in part or full, the reviewer will ensure that appropriate measures are taken including (but not limited to):

- redacting parts of the full draft report of the provisional determination, or the *Summary Investigation Report and Findings* (as the case may be) before providing it to the applicant;
- providing the full draft report of the provisional determination, or the *Summary Investigation Report and Findings* (as the case may be) to the applicant in confidence;
- not providing the full draft report of the provisional determination, or the *Summary Investigation Report and Findings* (as the case may be) to the applicant. However, the applicant must be informed of the provisional determination of their internal review application and allowed a reasonable opportunity to respond and/or provide further information in response to the provisional determination.

However, in taking appropriate measures, the reviewer must ensure that procedural fairness is observed in accordance with this Process and the Policy (see in particular paragraph 4.6.4 of this Process).

4.7 After the Review

4.7.1 Updating the Register

The IRCO will update the *Register of Section 270 Internal Reviews* in Council's EDRMS to include details of the application and the outcome of the review.

4.7.2 Reporting to the Corporate Management Team

Any recommendations for service improvement agreed by the Council or CEO arising from an internal review process will be actioned by the IRCO to the relevant Director or CEO for implementation.

4.7.3 Reporting to the Elected Body

The Governance Advisor or delegate will prepare and submit to the Elected Body an annual report each July which includes the following information about internal review applications requested within the previous 12 months:

- a) the number of applications for review made;
- b) the kinds of matters to which the applications relate;
- c) the outcome of applications;
- d) a statement to quantify the resources used for each review and associated costs with an attached *Assessment of Resources Schedule*;
- e) a summary of how the outcomes have been used to improve Council's customer service, policies and processes; and
- f) such other matters as may be prescribed by the Regulations.

4.7.4 Reporting to the Community

The information outlined in paragraph 4.7.3 above will also be included in Council's Annual Report as required under the *Local Government Act*.

5. Training

- 5.1 Elected Members, Directors and Managers will receive training in this process during their induction and refresher training as required.

6. Documents to Implement Process

Written application to request an Internal Review
Letter to applicant confirming receipt of application
Section 270 Review of Investigation Template (B3812)
Section 270 Assessment of Resources Schedule (B3812)
Section 270 Summary Investigation Report and Findings (B3812)
Determination letter (B3812)
Annual report compiling Section 270 applications and determinations

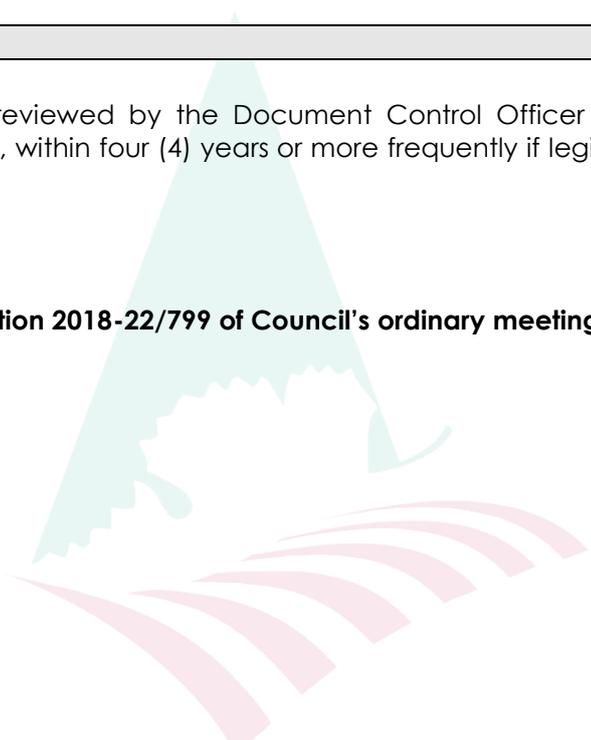
7. Legislation and References

Local Government Act Section 270

8. Review

- 8.1 This Process 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.

Approved by Council resolution 2018-22/799 of Council's ordinary meeting of 19 July 2022



The Barossa Council