



MITCHAM

Independent Review of a Decision Policy

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public policy

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1. PREAMBLE

Council, its committees, staff and contractors make decisions every day that impact members of the community. It is imperative that these decisions are fair, objective, transparent and subject to review.

Request for review of a council decision is managed in accordance with Council's Complaints Handling Policy and may be resolved following one of more of the following processes:

1. an informal, immediate resolution to a request for review of a decision (wherever possible);
2. escalation of the review of a decision by a more senior officer; and
3. an internal review of a decision under Section 270 of the *Local Government Act 1999* ('the Act') where an application is lodged.

Section 270 of the Act requires Council to maintain policies, practices and procedures for dealing with requests for service, complaints and requests for the internal review of decisions of:

- a) Council;
- b) employees of the Council; and
- c) other persons acting on behalf of the Council.

2. PURPOSE

The purpose of this policy is to provide direction for how Council will deal with a formal request for the internal review of a Council decision (including a decision by its employees and other people acting on behalf of Council).

3. SCOPE

Council aims to resolve all requests for review of a decision as quickly and effectively as possible. Council **Administration** will seek to ensure that any person who makes an application to review a Council decision is made aware of the process under section 270 of the Act.

Council **Administration** will encourage parties to participate in a resolution process prior to lodging an application for internal review of a Council decision.

In some cases, legislation provides for a statutory process to appeal and/or review certain Council decisions. These decisions are outside the scope of a section 270 review. A list of the Acts which contain specific appeal and/or review procedures relevant to certain Council decisions appears in Appendix A of this Policy.

Applications for a section 270 review in relation to matters that fall outside of statutory appeal or review procedures will be considered on their merits.

The Council is not required to cease or delay implementing a decision that is the subject of an application or request for review of a Council decision. The Council may, however, choose to do so as a matter of discretion where it considers this is appropriate.

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4. DEFINITIONS

Act means the *Local Government Act 1999*.

Alternative Dispute Resolution includes mediation, conciliation and neutral evaluation as set out in Section 271 of the Act

Applicant is any party lodging a written application or request for a review of a decision, and could be an individual or a group, residents, ratepayers, business owner(s), users of Council facilities and visitors to the area.

Business day means a day when the Council is normally open for business, i.e. Monday to Friday, excluding public holidays.

CEO is the Chief Executive Officer of City of Mitcham.

Council refers to City of Mitcham.

Conciliation is a voluntary process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the conciliator), identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement. The conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the participants to reach an agreement.

Decision is a position adopted by the Council, a Council committee, Council employees and/or any person acting on behalf of the Council, which may, for example, involve a determination to take a certain course of action. In the case of decisions made by the Council (the elected body) or a Council committee these decisions are arrived at by a formal **resolution** at a Council or committee meeting that is passed following the Council's/committee's consideration of relevant information.

Decision-maker refers to the individual or entity responsible for the decision under review.

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.

Investigator is a person who fulfils the role of reviewer and is usually an external appointment.

IRCO is the Internal Review Contact Officer who is appointed to act as liaison between Council and the applicant.

Mediation is a voluntary process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.

Neutral Evaluation is a process in which the parties to a dispute present arguments and evidence to a dispute resolution practitioner (evaluator) in an attempt to resolve the matter. The evaluator must seek to identify and reduce the issues of fact and law that are in dispute, assess the relative strengths and weaknesses of each party's case and offer an opinion of the likely outcome of further proceedings.

Procedural fairness is acting in accordance with the principles of natural justice including by ensuring relevant parties are (where applicable) provided with a reasonable opportunity to be heard, to provide information and to respond to issues raised.

Reviewer refers to the individual or entity who is given the responsibility for the resolution of a request for review of a decision.

Frivolous request is any request from an applicant, the granting or progression of which by the Council would result in an unreasonable diversion of public resources, including because it relates to unsubstantiated claims and/or a matter that has already been dealt with by the Council.

Vexatious request is any request from an applicant that the Reviewer considers is mischievous, without sufficient grounds, unsupported by evidence, or serving only to cause annoyance.

5. PRINCIPLES

The principles underpinning this policy are:

Fair treatment which requires impartiality and transparency at all stages of the process and the provision of reasonable opportunity for the applicant to provide information and further comment.

Accessibility which includes generating awareness of Council's policies and procedures including how to lodge a formal review and providing assistance to applicant's as may reasonably be necessary to enable them to lodge an application for a section 270 review

Responsiveness to reviews which requires the provision of sufficient resources, well trained staff and a willingness to review and improve Council systems and ensuring completion in a timely manner.

Efficiency in resolving reviews as quickly as possible, while ensuring that each application is dealt with at a level that is appropriate to the complexity of the decision.

Integrated approach to issues under review which have overlapping functional responsibilities.

Continuous Improvement by monitoring the effectiveness of council processes and practices and implementing identified improvements to enhance their effectiveness and/or efficiency.

6. POLICY STATEMENT

The City of Mitcham is committed to transparent decision making processes and to providing access to a fair and objective procedure for the review of decisions to those who feel they have been adversely affected by them.

An application for a review of a Council decision provides Council with an opportunity to revisit a decision which has aggrieved an interested party. It can also be considered as an opportunity for improvement.

A review will pay particular attention to the process used to arrive at a particular decision as well as any new and relevant information.

6.1. How to Make an Application for a review of a decision

An application or request for review of a Council decision is required to be made within 6 months of that decision having been made and is an option that is available to any person who is aggrieved by the decision. This includes if an initial complaint resolution process does not resolve the matter to that person's satisfaction.

The Council may exercise discretion to allow a longer timeframe within which an application for review may be made, based on the individual merits of each application, and on a case-by-case basis.

Applications must be in writing and addressed to the Chief Executive Officer and identify the relevant decision and (wherever possible) the decision-maker. The Application should include the applicant's reasons for requesting the review and any outcome that the applicant is seeking and be accompanied by any supporting evidence.

6.1.2 Equity of treatment

All applicants will be treated equally, in accordance with good administrative practice. Council's procedures are designed to ensure that:

- a reasonable attempt is made to efficiently resolve the matter through Council's Complaint Resolution process in the first instance;
- every applicant has the opportunity to make an application for review of a decision covered by this policy;
- an unbiased assessment is undertaken;
- decisions are based on sound evidence; and
- applicants receive information about the progress and outcome of the review.

To ensure that persons are not prevented from lodging an application for review because of any difficulties they may experience, staff will offer assistance where appropriate and provide it on request, including assistance in documenting the reasons for the review in writing, when circumstances warrant. This may include arranging access to interpreters, aids or advocates.

There is no fee payable for a review of a Council decision.

6.1.3 Who can make an application?

An application for review may be made by any person who is aggrieved by a Council decision.

An applicant may be an individual or a group, a resident, ratepayer, business owner, user of council facilities or a visitor to the area. Connection between the decision of council and the applicant is important to clarify when making an application for review of a council decision.

Depending on the particular circumstances, an applicant may also include a person who is not the direct subject of the decision. For example, where a Council issues a permit for a person to keep more than the maximum number of dogs permitted under a by-law, a neighbour may seek an internal review of that decision.

6.1.4 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 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 Act.

6.1.5 Refusal of an application

The Council may refuse to consider an application for review if:

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

A decision to refuse an application for review will not be made lightly and reasons for the refusal will be documented which will include reference to any supporting evidence. The decision to refuse an application is assessed by the Internal Review Contact Officer (IRCO).

6.2. Internal Review Contact Officer

An Internal Review Contact Officer (IRCO) appointed by the CEO is the initial point of contact for applicants.

The role of the IRCO is (in part) to:

- acknowledge the receipt of the application within 5 business days;
- explain the review procedure to the applicant and explore the possibility of progressing any alternative options to resolve the matter, such as alternative dispute resolution;
- Where applicable, inform the CEO / Council of reason to 'trigger' 'Refusal'.
- outline the timeframes involved and the action to be taken in the first instance. Where possible, a review will be completed in twenty (20) business days. This timeframe may be longer if an external investigator is used and/or the matter is referred to the Council (elected body) for a decision;
- keep the applicant informed of progress of the review (or any delays).

6.3. Review process

6.3.1. Appointment of Reviewer

The process for reviewing a decision will vary depending on how the decision was originally made.

If the decision under review was made by a resolution of Council then applications for the review of that decision will be referred to the Council (elected body) for determination. In this case, the CEO (in consultation with the Mayor where the CEO sees appropriate) is responsible for appointing the Reviewer who will undertake the investigation and the preparation of a report for Council's consideration. The Reviewer may be the CEO, a senior Council Officer, or a person independent of the Council.

If the decision under review is a decision that was made by the CEO, then a Director who has not had involvement in the decision and whose responsibilities fall outside of the issues relevant to the review will be responsible for appointing a person external to the Council as the Reviewer, in consultation with the Mayor (i.e. who will investigate and report back to Council for its determination).

If the decision under review was made by an officer or an agent of the Council, then the CEO will appoint a Reviewer who will investigate and report back to the CEO for their determination. The Reviewer may be a senior Council officer who has no association with the matter under review.

If the decision under review is contentious, complex and/or raises legal questions a person external to the Council with appropriate expertise may be appointed as the Reviewer, and the cost of such appointment be reported to council.

The Council may otherwise determine the outcome of an application for review:

- in respect of a Council decision relating to civic and ceremonial matters, or
- where the CEO determines this is appropriate having regard to the decision subject of the application; or
- if the otherwise Council resolves to this effect.

6.3.2. Role of reviewer

The role of the Reviewer is to review the decision in question to ensure that the decision-maker complied with all procedural requirements and made the best possible decision in the circumstances.

In undertaking the review, the Reviewer must consider both the procedure leading to the decision and the merits of the decision. The Reviewer is required to determine and report upon whether it was the correct and preferable decision in all of the circumstances.

Matters to be considered by the Reviewer in assessing the legality of the decision and whether it is the 'correct and preferable' decision include (without limitation):

- the legislative powers pursuant to which the decision is made;
- the application and affect of relevant Council policies in relation to the decision;
- whether all matters relevant to the decision were taken into account;
- that the decision was made in good faith and not for any improper purpose;
- whether the decision was objectively reasonable and appropriate in all of the circumstances.

The Reviewer is responsible for ensuring that

- findings of fact are based on evidence;
- any recommendations to resolve the matter are reasonable; and
- that procedural fairness is accorded to all parties as necessary;

6.3.3. Procedural fairness

Council will observe the principles of procedural fairness (also called 'natural justice') when exercising its statutory powers in a manner that adversely affects the rights and interests of individuals.

In the context of a section 270 review, procedural fairness involves:

- giving the applicant adequate opportunity to put their case forward and to provide relevant information;
- ensuring that the Reviewer is objective (i.e. not biased) and does not have a personal interest in the outcome and makes findings based on the evidence;
- providing the applicant with an opportunity to comment in relation to any final report and to make submission in relation to any proposed recommendation. Where the reviewer is the Council a submission may be made by way of a deputation to the Council at a formal meeting if a request for the deputation is approved in accordance with the *Local Government (Procedures at Meetings) Regulations 2013*.

6.3.4. Reasons for a decision

While there is no statutory requirement to give reasons for a decision arising from a review, Council will provide reasons for the decision of the Reviewer where practicable.

Council will always give reasons to explain the outcome of the review or the 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
- it relates to conditions that are attached to any approval, consent, permit, licence or other authorisation issued by the Council.

6.3.5. Outcome of a review

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 the Council and applicant. The remedy chosen will be proportionate and appropriate to any failing that the review process may have identified.

The range of other possible outcomes includes:

- an apology
- an explanation
- mediation or other alternative dispute resolution process
- an admission of fault
- Council Motion to vary, amend or rescind.
- a change to policy, procedure or practice
- a correction of misleading records
- financial compensation, including a refund of any fees paid by the applicant
- the waiving of a debt
- the remission of a penalty
- disciplinary action against Council employees
- referral of a matter to an external agency for further investigation

The remedy or response may be one, or a combination of these actions. The chosen remedy will be proportionate and appropriate to the findings of the review and will take into account any remedy sought by the applicant as part of their application for review.

If an apology is required it will be done promptly and the appropriate action will be taken to make any improvements required to the process.

Where disciplinary action is pursued against a Council employee as a result of the outcomes of a review process, this will occur on a confidential basis and the applicant is not entitled to information regarding the details of any action taken.

The Council itself and the CEO are the only people authorised to offer financial compensation and this will only occur after consultation with the Local Government Association Mutual Liability Scheme.

The IRCO will notify the applicant of the outcome of the review in writing. Where appropriate, information will also be provided to the applicant about alternative remedies, including any rights of appeal and the right to make a complaint to an external agency such as the SA Ombudsman.

6.4. Reporting and records management

All applications will be recorded in Council's records management system.

The IRCO will record information about all applications for review in order to submit a report to Council annually regarding applications for review that are received by the Council. The report will include:

- the number of applications for review made under section 270 of the Act,
- the kinds of matters to which the applications relate;
- the outcomes of the applications; and
- any other matters as may be prescribed by the regulations under the Act.

This information, as specified in Section 270(8), will be included in Council's Annual Report as per Schedule 4(1)(i) of the Act.

The IRCO will also report to the Council regarding how the outcomes have been used to improve Council's customer service, policies, procedures and practices. Where practicable and appropriate, learning outcomes will be shared with relevant local government agencies and Networks.

6.5. Other formal avenues of complaint

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, or taking legal action at any time. Where a complaint is made to the Ombudsman in the first instance, the Ombudsman may, where he sees fit, refer the matter back to the Council to undertake a section 270 review.

7. PRIVACY AND CONFIDENTIALITY

Applicants should be aware that the details of any request for review of Council decision may be included in the Council Agenda and Minutes which are public documents. Where this occurs, the applicant's name and address will be kept confidential in so far as it is practicable to do so. If this is not practicable, the applicant will be advised.

All applications for review of Council decision lodged with Council are subject to the *Freedom of Information Act 1991* and may be disclosed in accordance with the provisions of that legislation.

Whilst the confidentiality of applications for review cannot be guaranteed, where a request for review is referred to the Council for determination, the Council may consider the matter in confidence if it is lawful and appropriate to do so, subject to one of the grounds under section 90(3) of the Act being satisfied.

8. AVAILABILITY OF POLICY

The policy is a public document and is available for inspection at the:

Customer Service Centre
City of Mitcham
131 Belair Road
TORRENS PARK SA 5062

It is available for inspection and downloading from Council's website
www.mitchamcouncil.sa.gov.au

9. POLICY REVIEW

This policy will be reviewed every 2 years or earlier as determined by the relevant Manager.

10. VERSION HISTORY

VERSION	AUTHOR(S) POSITION	CHANGES	DATE
1	Governance Officer		26/09/2000
2	Governance Officer		20/12/2005
3	Governance Officer	Annual reporting	9/05/2006
4	Governance Officer	Comprehensive review	23/10/2012
5	Governance Officer	Comprehensive review	10/2/2017

11. DOCUMENT CONTROL

Responsible Department	Corporate Affairs		
Delegations Apply	YES		
Classification	Governance		
Applicable legislation	Local Government Act 1999 (Section 270)		
Related Policies & Corporate Documents	Internal Review of a Council Decision - Procedure Complaints Policy Customer Service Policy Rating Policy Statement		
Additional references	Ombudsman SA, RIGHT OF REVIEW, An audit of Local Government Internal Review of Council Decisions Procedures. Ombudsman SA, Valuing Complaints - An audit of complaint handling in South Australian councils – November 2011		
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Template Folder No:	FF/2012/245	Template Record No:	12.60143[v4]

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APPENDIX A

Legislation that provides for statutory appeal/review processes that may be applicable to decisions subject of an application for a section 270 review.

Community Titles Act 1996

Development Act 1993

Dog and Cat Management Act 1995

Environment Protection Act 1993

Expiation of Offences Act 1996

Fire and Emergency Services Act 2005

Food Act 2001

Freedom of Information Act 1991

Heavy Vehicle National Law (South Australia) Act 2013

Local Government (Elections) Act 1999

Local Government Act 1999

Natural Resources Management Act 2004

Road Traffic Act 1961

Roads (Opening and Closing) Act 1991

South Australian Public Health Act 2011

Strata Titles Act 1988

Supported Residential Facilities Act 1992

Work Health Safety Act 2012

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