



City of Salisbury Values: Respectful, Accountable, Collaborative, Helpful

Internal Review of Council Decisions Policy and Procedure

Adopted by:	Council
Responsible Division:	CEO and Governance
First Issued/Adopted:	20 December 2021
Last Reviewed:	November 2021
Next Review Date:	November 2023

1. Introduction

- 1.1 The Council will review certain types of decisions in accordance with this procedure. This document sets out:
 - a) the decisions which are subject to review;
 - b) the method of applying for a review;
 - c) the review process; and
 - d) record keeping requirements.
- 1.2 Council, its committees, staff and persons 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.
- 1.3 Council is committed to open, responsive and accountable government. This includes providing processes by which citizens adversely affected by a decision of Council can have their grievances considered.
- 1.4 This procedure will be widely accessible to ensure that customers are fully aware of their right to request the review of a decision and the process that

will be followed. Everyone will be treated equally, in accordance with good administrative practice.

Council's procedures are designed to ensure that:

Every person has the opportunity to make an application for review of a decision covered by this procedure

- a) An unbiased review is undertaken
- b) Outcomes of a review are based on sound evidence
- c) Applicants receive information about the outcome of the review.

2. Scope

The Local Government Act 1999

- 2.1 This policy and procedure is required by section 270(1) of the *Local Government Act 1999* (the Act) and forms part of the council's processes for dealing with complaints. This policy and procedure is one aspect of Council's customer focussed approach to service delivery. It provides a further opportunity to review the way Council provides services to the community, and to identify areas for improvement.
- 2.2 The Internal Review of Council Decisions Policy and Procedure applies when reviewing decisions of Council as outlined below and applies to all Council staff who may be involved in receiving and dealing with an application for review of a Council decision.

Relationship with other Council Policies and Procedures

- 2.3 Council also has a Customer Compliments, Comments and Complaints Procedure for dealing with complaints and requests for service. As a general rule, Council will promote that Procedure in the first instance as it offers the potential for immediate resolution.
- 2.4 An Internal Review of a Council Decision is the third tier in Council's complaints handling procedure and will commence at the point where:
 - A request for the review of a Council decision is received; or
 - A complaint escalates to Tier 3 under Council's Customer Compliments, Comments and Complaints Procedure

and on Council's receipt of the Prescribed Application Fee of \$20.

Matters outside the scope of the Policy

- 2.5 Other provisions in the Act prescribe appeal arrangements in certain circumstances. For example, objections to valuations made by a Council and appeals against orders made pursuant 254 of the Act (Power to make orders).
- 2.6 In addition, the Internal Review of Council Decisions Policy and Procedure will not apply when an alternative statutory process for a review or appeal exists in other legislation. Examples of other legislation containing unique statutory processes 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 Section 255 Order to the Environment, Resources and Development Court;
 - *Expiation of Offences Act 1996*. Although there is no external procedure, a review of a decision relating to the issue of an expiation notice must be undertaken in accordance with this Act by a properly delegated Office;
 - Control Order under the *Dog and Cat Management Act 1995*;
 - A section 92 notice under the *South Australian Public Health Act 2011*.
 - *Environmental Protection Act 1993*;
 - *Food Act 2001*;
 - *Electoral Act 1985*;
 - *Expiation of Offences Act 1996*;
 - *Fair Work Act 1994*;
 - *Road Traffic Act 1961* & Australian Road Rules;
 - *Fire and Emergency Services Act 2005*;
 - Matters relating to Home and Community Care services, where specific complaint/review mechanisms are identified.
- 2.7 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. Note that as a general rule, the Ombudsman prefers that matters be addressed by Council in the first instance, unless that is not appropriate in the circumstances.
- 2.8 Full cooperation with any such authority will be afforded as necessary, in order to resolve the matter as quickly as possible.
- 2.9 This Policy/Procedure does not provide for a review of a decision of Council:
- To refuse to deal with, or determine to take no further action in relation to, a complaint under Part A1 Division 1 of the *Local Government Act*

1999 (Member Behaviour) by a person who is dissatisfied with the decision; or

- Relating to a recommendation of the Ombudsman under part 1 “Conduct of Members”, Review of local government acts, decisions and operation - Chapter 13 of the *Local Government Act 1999*.3.

3. Legislative Requirements and Corporate Policy Context

- 3.1 *Local Government Act 1999*
- 3.2 *Freedom of Information Act 1991*
- 3.3 *Independent Commissioner Against Corruption Act 2012*
- 3.4 *Ombudsman Act 1972*
- 3.5 *State Records Act 1997*

4. Interpretation/Definitions

Alternative Dispute Resolution includes mediation, conciliation or neutral evaluation as set out in section 271 of the *Local Government Act 1999*.

Applicant is any party lodging the request for review of a decision and could be an individual or a group, including residents, ratepayers, business owners, 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 Salisbury.

Council refers to City of Salisbury

Council Decision is a formal decision of the Elected Council or a section 41 *Local Government Act 1999* Council Committee, a decision made under delegation by an employee of Council, or a decision by other persons acting on behalf of Council.

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 a 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.

Prescribed Application Fee means the prescribed fee of \$20, as set in the *Local Government (Application for Review Fee) Notice 2021*, and applies to all section 270 applications for review of a council decision.

Reviewable decision refers to the decision of which the review is sought.

Reviewer refers to the individual or entity responsible for resolution of a request for review of a decision.

Vexatious request is any request from an applicant who has consistently, over a period of time, complained about minor matters or the same matter, which have previously been dealt with and no new information has been provided by the applicant and/or is considered by the reviewing officer to be mischievous, without sufficient grounds or serving only to cause annoyance.

5. Applications for Review of a Decision

Making an application

5.3 An application for a review of a Council decision provides Council with an opportunity to revisit a decision which has aggrieved an interested party, which may include an individual or group, ratepayer, resident or business owner. Depending on the particular circumstances, it may also include a person who is not the direct subject of the decision. (For example, where 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 the decision.) Council will determine whether a person has a sufficient interest to apply for an internal review of a decision, on a case-by-case basis.

5.4 An application must be made in writing and received by Council within 6 months of the making of the original decision, of which the review is sought (the reviewable decision) preferably using the Application Form found in Attachment 1, including:

- Name and residential address of the applicant
- Postal address if different from above
- Daytime telephone number
- The reasons for applying for the review (that is, why the applicant believes that the decision is wrong).

and the payment of the prescribed application fee.

5.5 There is a \$20 application fee that must be paid to the Council at the time an applicant lodges an application. An application will not be considered 'officially received' until payment has also been received or the Fee has been waived by Council.

5.6 Council may, in its absolute discretion, reduce, waive or refund (in whole or part) the prescribed fee under clause 5.5.

5.7 Council may allow an application to be made more than 6 months after the making of the reviewable decision in appropriate cases.

5.8 An application must be addressed to the Chief Executive Officer or the Mayor depending on the following circumstances:

- If the request for a review of a decision made by Council as the elected body, or a decision made by an employee of Council, or other person acting

on behalf of Council, the application should be addressed to the Chief Executive Officer of the City of Salisbury; or

- If the request is for a review of a decision made by the Chief Executive Officer, the application should be addressed to the Mayor.

By post or hand-delivered:

Internal Review Request
Chief Executive Officer *or* Mayor
City of Salisbury
34 Church Street
SALIBSURY SA 5108

or

By email:

Internal Review Request
Chief Executive Officer *or* Mayor
city@salisbury.sa.gov.au

- 5.9 An application can be emailed directly to the above email address, however the application will not be considered 'officially received' until payment has also been received. If you choose to take this option please put a note with the payment advising of the application it relates to and address the payment to:

Internal Review Request
Chief Executive Officer *or* Mayor
City of Salisbury
12 James Street
SALIBSURY SA 5108

- 5.10 Although Council can be expected to have information and material relevant to the matter under review, an application for review may also include new, relevant information or evidence to support the application.
- 5.11 The process for applying and participating in a review of a Council decision is to be made as accessible as possible, with assistance provided if considered necessary. Assistance may include interpreter and/or translation services, assisting with writing the application, or ensuring ease of physical access to meeting rooms etc. If a person refuses assistance, that does not negate their right to proceed with the application.
- 5.12 The CEO or delegate (or Mayor where appropriate) will assess the application and determine the appropriate action. This may include direct referral of the matter to Council, or to an external person or panel independent of the Council to conduct the review, or to SAPOL if a criminal matter or to the Office of Public Integrity.

- 5.13 The CEO may appoint another Council Officer (the “reviewing officer”) such as a member of the Executive Group or senior officer, who was independent of the original decision, or set up a panel for the express purpose (i.e. it does not have permanent status) to conduct the review.
- 5.14 Where the CEO or delegate, or Mayor, or reviewing officer has reasonable suspicion that the complaint involves corruption in public administration then the matter must be reported to the Office of Public Integrity (OPI) in accordance with the *Independent Commissioner Against Corruption Act 2012*.
- 5.15 Where the CEO or delegate, or Mayor, or reviewing officer has information that the complaint involves maladministration or misconduct, then the CEO or delegate, or Mayor, or reviewing officer may refer the complaint to the Ombudsman or seek guidance from the Ombudsman in accordance with the *Ombudsman Act 1972*.
- 5.16 The role of the reviewing officer is to:
- i. Explain the procedure to the applicant and explore what options are available to resolve the matter, such as alternative dispute resolution, before a formal application is lodged (where possible and appropriate);
 - ii. Maintain a register of all applications for internal review lodged and the outcome;
 - iii. Acknowledge receipt of the application;
 - iv. Outline the timeframes involved and the action to be taken in the first instance;
 - v. Undertake a preliminary investigation to determine what (if any) actions have already been taken to try to resolve the matter;
 - vi. Keep the applicant informed of progress;
 - vii. Ensure that adequate records of the review process and findings are produced and maintained;
 - viii. Where matters are referred to the Council itself for consideration, provide a report(s) to Council at intervals through the review process and a final report at the conclusion of the process.
- 5.17 In undertaking the internal review, the CEO, or Council, or delegated party will review the decision in question to ensure that the original decision-making process has regard to the following:
- i. The decision maker had the power to make the decision;
 - ii. All matters relevant to the decision were considered and were not influenced by extraneous factors;
 - iii. The process was free from bias;
 - iv. The decision maker did not exercise a discretion or power in bad faith or for improper purpose;
 - v. The decision was made on facts and evidence;
 - vi. The decision was reasonable;

- vii. Any relevant legislation, policies or procedures were considered;
- viii. The decision maker did not exercise a discretionary power at the direction of another person.

5.18 Where the request for review is referred to Council, the CEO or delegate (or Mayor) will prepare a report to Council which will include all relevant information about the decision being reviewed.

Council Review

5.19 Matters that will be referred to the Council itself for consideration, or further consideration are:

- i. Requests for review of a decision formally made by Council or for alteration to a Council Policy;
- ii. Requests for review of a decision made by the CEO which is not supported by Council policy or clear procedural guidelines;
- iii. Requests for review of a decision made by an officer of the Council which is not supported by Council Policy or clear procedural guidelines.

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

- i. An application is made by an employee of Council and relates to an issue concerning their employment;
- ii. It appears that an application is frivolous or vexatious;
- iii. An applicant does not have sufficient interest in a matter;
- iv. Council or the reviewer (as the case requires) is satisfied that the subject matter of the application has been or is already the subject of a review by Council or an investigation, inquiry or review by another authority.

5.21 Pursuant to Section 270(2)(ca) of the *Local Government Act 1999*, where the application for review relates to the impact a declaration of rates or service charges may have on an applicant, the review will be dealt with promptly and if appropriate be addressed through the provision of relief or concessions under the Local Government Act 1999. It is important to note that section 270(9) of the Act provides as follows:

“The right of Council to recover rates is not suspended by an application for the provision of some form of relief or concession with respect to the payment of those rates (but a council may then, if appropriate in view of the outcome of the application, refund the whole or a part of any amount that has been paid).”

5.22 Where a request for review has been referred to Council, the applicant will be advised of the date that the matter will be presented and will be given the opportunity to provide a written or verbal submission (i.e. deputation) in relation to the report for Council’s consideration

Process Timescale

5.23 Applications for a review of a Council decision are to be formally acknowledged within 5 working days or receipt, including advice to the applicant about the anticipated review process and time line.

- 5.24 In most cases requests for review will be considered and determined within 28 days. However, in some circumstances the review process may take longer.
- 5.25 The applicant will be encouraged to participate cooperatively in the review process.
- 5.26 The applicant will be kept informed about the progress of the review either by email, letter or telephone.
- 5.27 Opportunity to provide additional information:
- i. After initially assessing an application for an internal review of council decision, the reviewing officer may (if deemed appropriate) invite the applicant to provide further information to assist in understanding the applicant's concerns, the issue to be investigated and the outcome or remedy sought.
 - ii. Applicants are able to supply information relevant to the initial application at any time during the review process. However, if the additional information is determined to be of a different nature the applicant will be advised of the need to submit a separate application for an internal review of a council decision.
- 5.28 The applicant will be informed in writing of the outcome of the review within 5 business days of the determination being made.
- 5.29 While there is no statutory requirement to give reasons for a decision, Council may provide reasons for the decision of the reviewing officer where practicable. Council will aim to give reasons to explain the outcome where:
- i. A decision is not in accordance with the adopted policy;
 - ii. A decision is likely to detrimentally affect rights or interests of individuals (or organisations) in a material way;
 - iii. Conditions are attached to any approval, consent, permit, licence or other authorisation.

Procedural Fairness

- 5.30 Council will observe the principles of procedural fairness (also called "natural justice") when exercising its statutory powers which could affect the rights and interests of individuals.
- 5.31 "Procedural fairness" involves:
- i. giving an individual:
 - a. a right to put their case forward; and
 - b. an opportunity to provide all documentary evidence, rather than an oral hearing.
 - ii. ensuring that the reviewer is not biased and does not have a personal interest in the outcome, and
 - iii. acting only on proper evidence

Remedies

- 5.32 Where the review of a decision upholds the applicant's grievance and appropriate remedy or response will be determined which is consistent and fair for both Council and the applicant. The remedy will be proportionate and appropriate to the matter. The range of outcomes includes:
- i. An explanation;
 - ii. Mediation, conciliation, or neutral evaluation;
 - iii. A change of policy, procedure or practice;
 - iv. A correction of misleading records;
 - v. Disciplinary action;
 - vi. Referral of a matter to an external agency for further investigation or prosecution.

Confidentiality

- 5.33 The details of any request for internal review will be kept confidential as far as practicable. When no longer practicable, the applicant will be advised.
- 5.34 The applicant will be encouraged to observe confidentiality as this is likely to achieve the fairest result for all concerned.
- 5.35 The applicant's personal information will be used by the reviewing officer in relation to investigating and reviewing the application.
- 5.36 Only relevant parties will be involved in the internal review process.
- 5.37 Where a request for review is referred to the Elected Council for determination, the Council may consider the matter in confidence only where it is lawful and appropriate to do so, subject to there being grounds under section 90(3) of the *Local Government Act 1999*.
- 5.38 If the application is referred to the Ombudsman, Council will share any relevant information relating to the application with the Ombudsman's office in accordance with the *Ombudsman Act 1972*.
- 5.39 Information contained within the application may be accessible under the *Freedom of Information Act 1991*.

Record Keeping

- 5.40 The reviewing officer must keep written records of interviews and the process undertaken.
- 5.41 Records must be factual and objective.
- 5.42 Records must be securely stored and registered in Council's records management system and in compliance with the *State Records Act 1997*.
- 5.43 Only those persons with a genuine need to view the material will be allowed access to the records.

Annual Reporting

- 5.44 In accordance with section 270(8) of the Act, the Council will, on an annual basis, provide information in its Annual Report that relates to:

- i. The number of applications for review made under this section, and
- ii. The kinds of matters to which the applications relate; and
- iii. The outcome of the applications made under this section; and
- iv. Such other matters as may be prescribed by the Regulations Under the Act.

Dispute Resolution

5.45 At its absolute discretion, and in accordance with section 271 of the Act, the Council may use alternate dispute resolution methods such as mediation, conciliation or neutral evaluation to resolve an application in circumstances where the CEO or his/her delegate deems such a course of action appropriate and the applicant is amenable to that process.

5.46 Costs and expenses associated with mediation and/or conciliation and neutral evaluation will be shared equally between the Council and the other party in accordance with section 271(7) of the Act.

6. Related Policies and Procedures

6.1 City of Salisbury Customer Compliments, Comments and Complaints Procedure

7. Approval and Change History

Version	Approval Date	Approval	Change
4.00	20 December 2021	Council Decision (1186/2021)	Updates to reflect new legislative provisions to Section 270 of the <i>Local Government Act 1999</i> .

8. Availability

8.1 The Policy is available to be downloaded, free of charge, from Council's website www.salisbury.sa.gov.au

9. Review

This Policy will be reviewed within 12 months of a Council election and thereafter as necessary taking into account:

- The frequency dictated in legislation; or
 - Earlier in the event of changes to legislation or related Policies and Procedures; or
- If deemed necessary by Council.

Further Information

For further information on this Policy please contact:

Responsible Officer: Manager Governance

Address: 34 Church Street, Salisbury SA 5108

Telephone: 8406 8222

Email: city@salisbury.sa.gov.au



Application for Internal Review of a Council Decision

Details of Applicant:

Name: Title: (Mr/s etc)

Address:.....

Telephone Number(s)Date of Application.....

Application Received:

Application Receipt Number

Fees and Charges

An application fee of **\$20** must be submitted with the completed application form.

Is the application fee attached? ☐Yes ☐No

Application fee is in the form of ☐Cheque ☐Cash ☐Money Order ☐Credit Card

(Do not send cash through the mail)

If you wish to pay your application fee via credit card, Council will contact the applicant via telephone to process payment on receipt of the application.

This application will not be valid until the application fee has been received by the Council.

Details of Application:

I request a review of the following decision made by Council:

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My reason for requesting a review of the decision is because:

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Applicant's Signature: **Date:**/...../.....