



AGENDA

FOR RESOURCES AND GOVERNANCE COMMITTEE MEETING TO BE HELD ON

20 MARCH 2017 AT CONCLUSION OF BUDGET AND FINANCE COMMITTEE

IN COMMITTEE ROOM 1, 12 JAMES STREET, SALISBURY

MEMBERS

Cr S Bedford (Chairman)
Mayor G Aldridge (ex officio)
Cr D Balaza
Cr D Bryant
Cr L Caruso
Cr R Cook (Deputy Chairman)
Cr D Pilkington
Cr D Proleta

REQUIRED STAFF

Acting General Manager Business Excellence, Mr B Naumann
General Manager City Development, Mr T Sutcliffe
Manager Governance, Ms T Norman
Manager Communications and Customer Relations, Mr M Bennington

APOLOGIES

LEAVE OF ABSENCE

PRESENTATION OF MINUTES

Presentation of the Minutes of the Resources and Governance Committee Meeting held on 20 February 2017.

REPORTS

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OTHER BUSINESS

CLOSE



MINUTES OF RESOURCES AND GOVERNANCE COMMITTEE MEETING HELD IN COMMITTEE ROOM 1, 12 JAMES STREET, SALISBURY ON

20 FEBRUARY 2017

MEMBERS PRESENT

Cr S Bedford (Chairman)
Mayor G Aldridge (ex officio)
Cr D Balaza
Cr D Bryant
Cr L Caruso
Cr R Cook (Deputy Chairman)
Cr D Pilkington
Cr D Proleta

STAFF

General Manager Business Excellence, Mr C Mansueto
General Manager City Development, Mr T Sutcliffe
Manager Public Health and Safety, Mr J Darzanos
Manager Communications and Customer Relations, Mr M Bennington
Acting Manager Governance, Ms J Rowett

The meeting commenced at 7:09 pm.

The Chairman welcomed the members, staff and the gallery to the meeting.

APOLOGIES

There were no apologies.

LEAVE OF ABSENCE

Nil.

PRESENTATION OF MINUTES

Moved Cr D Pilkington
Seconded Cr D Proleta

The Minutes of the Resources and Governance Committee Meeting held on 23 January 2017, be taken and read as confirmed.

CARRIED

REPORTS

Administration

3.0.1 Future Reports for the Resources and Governance Committee

Moved Cr D Pilkington
Seconded Cr L Caruso

1. The information be received.

CARRIED

3.0.2 Appointment of Deputy Chairman - Resources and Governance Committee

Moved Cr D Pilkington
Seconded Mayor G Aldridge

1. Cr R Cook be appointed as Deputy Chairman of the Resources and Governance Committee for the remainder of the term of Council.

CARRIED

Health, Animal Management and By-laws

3.3.1 Dog Registration Fees 2017-2018

Moved Cr D Bryant
Seconded Cr D Pilkington

1. The information be received.
2. Council endorse a maximum dog registration fee of \$65 for 2017-2018 financial year, with the eligible rebates as per the Dog Registration Fee Schedule Pro-forma provided in Attachment 5 to the Resources and Governance Committee agenda report of 20 February 2017.

CARRIED

Corporate Governance

3.6.1 Review of Flag Policy

Moved Cr R Cook
Seconded Cr D Balaza

1. The Information be received.
2. The Flag Policy as set out in Attachment 1 to this report (Resources and Governance 3.6.1, 20/02/2017), be endorsed.

CARRIED**3.6.2 Review of Protocol for Civic Events/Functions Policy**

Moved Mayor G Aldridge
Seconded Cr L Caruso

1. The Information be received.
2. The Protocol for Civic Events/Functions Policy as set out in Attachment 1 to this report (Resources and Governance 3.6.2, 20/02/2017), be endorsed.

CARRIED**3.6.3 Local Government Association Ordinary General Meeting
21/04/2017 - Call for Notices of Motion**

Moved Mayor G Aldridge
Seconded Cr D Pilkington

1. The information be received.

CARRIED**3.6.4 Media Policy Review**

Moved Mayor G Aldridge
Seconded Cr R Cook

1. The Media Policy, as set out at Attachment 1 to this report (Item No. 3.6.4, Resources and Governance Committee, 20/02/2017) be endorsed.

With leave of the meeting and consent of the seconder Mayor G Aldridge VARIED the MOTION as follows:

1. That a Further Information report be presented to Council at its meeting on 27 February 2017 amending Clauses 2.8 and 2.9 to reflect discussions at the Resources and Governance Committee meeting on 20 February 2017.

CARRIED

OTHER BUSINESS

Nil

The meeting closed at 7:33 pm.

CHAIRMAN.....

DATE.....

ITEM	3.0.1
	RESOURCES AND GOVERNANCE COMMITTEE
DATE	20 March 2017
HEADING	Future Reports for the Resources and Governance Committee
AUTHOR	Michelle Woods, Projects Officer Governance, CEO and Governance
CITY PLAN LINKS	4.3 Have robust processes that support consistent service delivery and informed decision making.
SUMMARY	This item details reports to be presented to the Resources and Governance Committee as a result of a previous Council resolution. If reports have been deferred to a subsequent month, this will be indicated, along with a reason for the deferral.

RECOMMENDATION

1. The information be received.

ATTACHMENTS

There are no attachments to this report.

1. BACKGROUND

- 1.1 Historically, a list of resolutions requiring a future report to Council has been presented to each committee for noting.

2. CONSULTATION / COMMUNICATION

- 2.1 Internal
 - 2.1.1 Report authors and General Managers.
- 2.2 External
 - 2.2.1 Nil.

3. REPORT

3.1 The following table outlines the reports to be presented to the Resources and Governance Committee as a result of a Council resolution:

Meeting Item	- Heading and Resolution	Officer
22/06/2015 3.3.2 Due:	Amendments to the Dog and Cat Management Act 3. Council note that staff will review the need for a cat by-law 12 months after the implementation of the proposed Bill and provide a further report to Council. July 2017	John Darzanos
28/09/2015 3.6.1 Due:	Review of Provision of Elected Member IT Equipment 2. A revised Elected Member Allowances, Facilities and Support Policy be brought back to Council in July 2018. July 2018	Joy Rowett
27/06/2016 3.6.2 Due:	Mobile Food Van Policy 3. Once the State Government position in relation to Food Trucks has been finalised a report be prepared setting out a Mobile Food Van Policy for endorsement. July 2017	Tim Starr
19/12/2016 3.5.2 Due:	Local Government Association of SA Governance Review Update 2. Staff report back on the proposed changes from the LGA Governance Review once the LGA have finalised their position. May 2017	Charles Mansueto
30/01/2017 3.2.1 Due:	Appointment of Independent Members to Development Assessment Panel 2. A further report is provided on the changes to the Development Assessment Panels as a result of the Planning, Development and Infrastructure Act 2016 once the full information has been released by the state government. July 2017	Chris Zafirooulouos
30/01/2017 3.6.4 Due:	Review of the Procurement Policy to incorporate use of Australian Made steel for Council construction projects 2. A review of the implications of the adoption of a variation to the Procurement Policy to use to use Australian made steel as set out in Part 1 (Item 3.6.4, Resources and Governance Committee, 23/01/2017) be undertaken in 12 months. January 2018	Matt Harris

4. CONCLUSION / PROPOSAL

4.1 Future reports for the Resources and Governance Committee have been reviewed and are presented to Council for noting.

CO-ORDINATION

Officer:	EXEC GROUP	GMBE	GMCID	GMCI
Date:	14/3/17	9/3/17		

ITEM	3.0.2
	RESOURCES AND GOVERNANCE COMMITTEE
DATE	20 March 2017
HEADING	Nominations Sought for the Board of Management of the Australia Day Council of South Australia
AUTHOR	Michelle Woods, Projects Officer Governance, CEO and Governance
CITY PLAN LINKS	4.3 Have robust processes that support consistent service delivery and informed decision making.
SUMMARY	Correspondence has been received from the Australian Electoral Commission acting on behalf of the Australia Day Council of South Australia Inc. seeking nominations for 2 Board Member positions on their Board of Management.

RECOMMENDATION

1. Cr _____ be nominated as a Board Member on the Australia Day Council of South Australia.

ATTACHMENTS

There are no attachments to this report.

1. BACKGROUND

- 1.1 Correspondence has been received from the Australian Electoral Commission acting on behalf of the Australia Day Council of South Australia (ADCSA) seeking nominations for 2 Board Member positions on their Board of Management.
- 1.2 Should more than 2 members nominate for a Board position, an election will be held in April.

2. CONSULTATION / COMMUNICATION

- 2.1 Internal
 - 2.1.1 An email was sent to Elected Members on 8 March 2017, advising of the nomination. At the time of writing this report, no members have indicated an interest in being put forward for a position on the ADCSA Board of Management.
- 2.2 External
 - 2.2.1 Nil.

3. REPORT

- 3.1 Correspondence has been received from the Australian Electoral Commission acting on behalf of the Australia Day Council of South Australia (ADCSA) seeking nominations for 2 Board Member positions on their Board of Management.
- 3.2 The term of office for the successful candidates will expire at the Annual General Meeting in April 2019.
- 3.3 The positions are voluntary and there is no remuneration. The Board meets approximately ten times per year on a Wednesday. Its major focus is the celebration of Australia Day.
- 3.4 Should more than 2 members nominate for a Board position, an election will be held in April.
- 3.5 Current Board members are:
- Cr. Houssam Abiad (Chair)
 - Mr Steve Maras (Deputy Chair)
 - Mr. Norman Schueler (Deputy Chair)
 - Ms. Adriana Christopoulos
 - Cr. Barry Featherston
 - Dr. Michael Henningsen
 - Mayor John Trainer OA
 - Mr. Peter Tsokas
 - Hon. Russell Wortley MLC
 - Ms. Amanda Grocock
 - Ms. Belinda Heggen
 - Ms. Kelly Noble
 - Ms. Brenna Chia
- 3.6 The following is an extract from the ADCSA website, providing information about the Council:

The Australia Day Council of South Australia (ADCSA) is an independent, non-profit, membership-based association. Funding and support comes from the Australian Government (via the National Australia Day Council), the Government of South Australia, Adelaide City Council, our membership base (including all local Councils, Corporate Club and Individual Members), sponsorships, grants, merchandise sales and partnerships.

To facilitate our aim of encouraging all Australians to 'Celebrate What's Great' about Australia and being Australian, a number of major events and programs are run that focus on Australia Day. National programs we coordinate at State Level include the Australian of the Year Awards and the Australia Day Ambassadors. Our major Statewide events include the Adelaide City Council Australia Day Concert, the Australia Day Parade, the Australia Day Luncheon and our Australia Day Awards Ceremony at Government House.

At State level, we run the Citizen of the Year Awards (also including Young Citizen and Community Event of the Year), the Minister for Education & Development's Award for Excellence in Languages and Culture and the "Women Hold Up Half The Sky" Award. These Awards are all presented on Australia Day Eve at our Awards Ceremony.

The ADCSA acts as an umbrella organisation for Australia Day events providing marketing support to help spread the Australia Day message. At Local Government level, the ADCSA provides support to Councils and organising committees for their 130+ Australia Day events including certificates and frames for their Australia Day Awards.

- 3.7 Nominations for the ADCSA Board positions close 5pm Monday 27 March 2017, which will not allow for a resolution from the Council Meeting being held on that evening.
- 3.8 It is proposed staff act on the recommendation from the Resources and Governance Committee, which will allow sufficient time to submit a nomination should the need arise.

4. CONCLUSION / PROPOSAL

- 4.1 Council is asked to determine if it wishes to put forward a nomination for one of two Board Member positions on the Australia Day Council of South Australia.
- 4.2 It should be noted, there is no obligation to submit a nomination.

CO-ORDINATION

Officer:	Exec Group	MG
Date:	14/3/17	08/03/2017

ITEM	3.4.1
	RESOURCES AND GOVERNANCE COMMITTEE
DATE	20 March 2017
HEADING	Provision of IT Loan Equipment
AUTHOR	Claudine Spinner, Information, Access & Community Programs Team Leader, Community Development
CITY PLAN LINKS	3.1 Be an adaptive community that embraces change and opportunities. 3.3 Be a connected city where all people have opportunities to participate.
SUMMARY	This report responds to Council resolution 1469/2016 requesting options for Council consideration to facilitate provision of IT equipment to community groups through appropriate Council locations.

RECOMMENDATION

1. That the information be received.
2. That Council note the options outlined for facilitating provision of information technology equipment to community groups through appropriate Council locations.
3. That Council endorse Option 1 as the recommended option for the provision of information technology equipment to community groups through Council locations.

ATTACHMENTS

There are no attachments to this report.

1. BACKGROUND

- 1.1 This report responds to the November 2016 Council Resolution 1469/2016 requesting staff to report on options for Council's consideration to facilitate provision of IT equipment to community groups through appropriate Council locations.

2. CONSULTATION / COMMUNICATION

2.1 Internal

2.1.1 An internal consultation was undertaken with the community development coordinators/team leaders of the following sites to identify what technology is currently available for use by community groups when accessing each site and the current level of utilization:

- Morella Community Centre
- Pooraka Farm Community Centre
- The Mawson Centre (Community Programs)
- Salisbury East Neighbourhood Centre
- The Paddocks Centre
- Bagster Road Community Centre
- Burton Community Centre
- Twelve25 Youth Enterprise Centre
- Len Beadell Library
- Ingle Farm Library
- The Mawson Centre (Library)
- Para Hills Library
- Salisbury West Library

2.2 External

2.2.1 N/A

3. REPORT

3.1 Local community groups are an important pathway for Salisbury's diverse community to learn and engage. Groups gather over a common goals and/or interests and are largely run by volunteers with little or no funds. From time to time, community groups require access to technology for guest speaker presentations, events and other activities.

3.2 Based on feedback from our community centres, the most commonly requested technology items requested by community groups are:

- Projectors
- Projector screens
- Laptops
- Computers

3.3 Council's community centres and libraries currently have the following items available community groups accessing Council facilities.

Centre	Projector	Screen	Tablets	Laptops	Desktop computer	Other
Morella Community Centre	Yes	Yes	Yes	Yes	Yes	Streaming facilities
Pooraka Community Centre	Yes	Yes	No	Yes	Yes	PA System Smart Whiteboard
The Paddocks Centre	Yes	Yes	No	No	Yes	Nil
Salisbury East Neighbourhood Centre	Yes	Yes	No	Yes	Yes	PA system Whiteboards (2)
Burton Community Centre	Yes	Yes	No	Yes	Yes	Nil
Bagster Road Community Centre	Yes	Yes	No*	No*	Yes	PA system Camera
The Mawson Centre	Yes	Yes	No*	No	No	PA system Camera
Twelve25 Youth Enterprise Centre	Yes	Yes	During office hours	During office hours	Yes	PA system Whiteboard
Len Beadell Library	Yes	Yes	Yes	Yes	Public Access computers	Streaming facilities Smart TVs
Salisbury West Library	No	No	No	No	Public Access computers	No
Ingle Farm Library	No	No	No	No	Public Access computers	No
Para Hills Library	No	No	No	No	Public Access computers	No
Mawson Lakes Library	No	No	No	No	Public Access computers	No

* Centre has the equipment for Centre led programs only and not for community group hire.

- 3.4 Feedback received from community centre coordinators indicates that through their own resources, they are currently able to meet the community's expectations in relation to the hire of equipment. This has been achieved through efficient utilization of their own resources and on occasion, the sharing of technology across centres. The Community Capacity & Learning Team is also currently reviewing how it promotes access to this equipment by raising community awareness of its availability.
- 3.5 Based on the information above, Council is now presented with two options:
- 3.5.1 **Option 1 – Maintain existing provision through community centres and libraries**
- The advantage of maintaining the existing provision through community centres and the Len Beadell Library is that we are able to currently meet the community's expectations in relation to the hire of equipment without requiring any further financial provisions from Council.
 - The disadvantage of this option is that equipment hire is only available as part of a room hire arrangement at community centres and libraries. However, there still remains the opportunity for community groups to source their own equipment through volunteer grant funding.
- 3.5.2 **Option 2 – Expanding provision of technology items through the library service**
- Consideration was also given to the possibility of the library service loaning technology equipment to community groups who would like to utilise same at non Council venues.
 - The advantage of this option is that it would enable community groups to have ready access to technology irrespective of whether they utilised Council community centre and library sites or secured alternative venues.
 - The disadvantages of this option are:
 - Council would need to fund the provision of significant purchase, upgrade and ongoing maintenance of the technology items;
 - overall management of lending technology items would have a significant impact on both branch and technology staffing resources due to the additional staff time required for maintaining the equipment, checking, upgrading and general administration;
 - in relation to laptops, there are potential issues concerning the licensing and managing of the computer image as hiring to the public may fall outside our current licensing arrangements;
 - community groups hiring equipment taken off site may require assistance with equipment set up or technical difficulties. A strategy would be required to manage this process;

- security will be a considerable issue with these devices. If loaned out via the Library Management System (recommended) this presents a risk to Council and community groups of damage or theft of equipment. A strategy would be required to minimise risk to assets and for compliance to existing insurance policies.

4. CONCLUSION / PROPOSAL

- 4.1 Technology facilities are currently available at nine council sites and this number will increase on completion of the Para Hills Hub development. Feedback on demand confirms that community needs are currently being met through efficient utilisation of existing resources and where necessary, a sharing of resources across sites. Based on this information, it is recommended that Council endorse option 1 – maintain existing provision through community centres and libraries.

CO-ORDINATION

Officer: EXECUTIVE GROUP
Date: 14/03/2017

ITEM	3.6.1
	RESOURCES AND GOVERNANCE COMMITTEE
DATE	20 March 2017
HEADING	Variations to Delegations
AUTHOR	Joy Rowett, Governance Coordinator, CEO and Governance
CITY PLAN LINKS	4.3 Have robust processes that support consistent service delivery and informed decision making.
SUMMARY	<p>The Local Government Association (LGA) periodically distributes information relating to delegations that require changes to be actioned by Council. These changes are usually as a result of legislative amendment or to correct errors that have been identified.</p> <p>Norman Waterhouse has updated the delegations templates to reflect changes to legislation as contained within LGA Circular 6.10 dated 8 February 2017.</p> <p>This report sets out changes required to City of Salisbury delegations in response to the changes made to the delegations templates.</p>

RECOMMENDATION

1. Council makes the following delegations under the Local Government Act 1999:
 - 1.1 In exercise of the power contained in Section 44 of the *Local Government Act 1999* the powers and functions under the following Regulations and specified in the proposed 'Instruments of Delegation', are hereby delegated from Tuesday 11 April 2017 to the person occupying the office of Chief Executive Officer, subject to the conditions and or limitations specified within the Delegations Register.
 - 2.1.2 *Local Nuisance and Litter Control Act 2016 and Local Nuisance and Litter Control Regulations 2017*
 - Regulations 5, 6(1)(a)(ii), 6(2), 6(3), 12, 13(2)(a), 13(2)(f), 13(2)(g), 13(3), 15(1), 16 and 17.
2. Such powers and functions may be further delegated by the Chief Executive Officer as the Chief Executive Officer sees fit and in accordance with the relevant legislation unless otherwise indicated in the conditions and/or limitations specified in the Delegations Register.

ATTACHMENTS

This document should be read in conjunction with the following attachments:

1. LGA Circular 6.10 - Delegations Update - Local Nuisance and Litter Control Regulations
2. Delegations Table of Updates - Local Nuisance Regulations 2017 as at 19 January 2017
3. Instrument of Delegation Under the Local Nuisance And Litter Control Act 2016 and Local Nuisance and Litter Control Regulations 2017

1. BACKGROUND

- 1.1 The LGA regularly advises Council of amendments to delegations due to changes in legislation as well as corrections to templates provided for recording the delegations.
- 1.2 This report deals with variations to the delegations as a result of the following LGA Circulars:
 - 1.2.1 LGA Circular 6.10 dated 8 February 2017 which sets out new provisions under the *Local Nuisance and Litter Control Regulations 2017*.

2. REPORT

- 2.1 Section 44 of the *Local Government Act 1999* (the Act) provides Council may delegate a power or function vested or conferred upon by this or another Act. Such powers and functions may be further delegated by the person occupying the office of Chief Executive Officer in accordance with Sections 44 and 101 of the Act as the Chief Executive Officer sees fit. A delegation made pursuant to Section 44 of the Act is revocable at will and does not prevent the Council from acting in a matter.

- 2.2 This report deals with variations to the Delegations as a consequence of:

2.2.1 **Review of Delegations Templates by Norman Waterhouse in LGA Circular 6.10 dated 8 February 2017.**

Due to legislative amendments, Norman Waterhouse conducted a review of relevant legislation which necessitated amendments to the Delegations Templates for the following Regulations:

Local Nuisance and Litter Control Act 2016 and Local Nuisance and Litter Control Regulations 2017

The *Local Nuisance and Litter Control Act 2016* was proclaimed on Thursday 21 July 2016 for staged commencement, 1 February 2017 for litter and 1 July 2017 for local nuisance.

As a result, Norman Waterhouse has conducted a review of the relevant legislation and prepared a new Instrument of Delegation contained within Attachment 3 under the *Local Nuisance and Litter Control Act 2016 and Local Nuisance and Litter Control Regulations 2017* which aims to reduce the prevalence of nuisance complaints through a greater understanding of nuisance, better consideration of nuisance by Councils in development assessment and improved methods of resolution, and to lower the prevalence of litter across South Australia, particularly in tourist and shopping precincts.

2.3 Process to be followed

- 2.3.1 Usually, in order for the statements contained in the Instruments of Delegations to come into effect, Council must first resolve to revoke the existing delegations that have been added or amended. In this instance, these are newly Gazetted Regulations and as such, there are no existing Delegations to revoke. Council then resolves to adopt the amended and new delegations contained in the highlighted sections of the Instruments of Delegations attached to this report.
- 2.3.2 In order to ensure that Council Officers have necessary powers to continue their duties, the resolution is worded so that the new delegations come into force from Tuesday 11 April 2017, to provide time for the new sub-delegations to be assigned and approved by the Chief Executive Officer. The new delegations will take effect immediately prior to the Chief Executive Officer's approval of the sub-delegations.
- 2.3.3 The exercise of powers and functions delegated by Council shall be undertaken in accordance with existing Council Policies. Even though Council may delegate its powers, functions and duties, this does not prevent Council from acting in the same matters at any time should the need arise.

3. CONCLUSION / PROPOSAL

- 3.1 A review of Council Delegations has been conducted following the introduction of Regulations under the *Local Nuisance and Litter Control Act 2016* and is presented to Council for endorsement.

CO-ORDINATION

Officer:	Executive Group	MG
Date:	14/03/2017	08/03/2017



Circulars

Delegations Update - Local Nuisance and Litter Control Regulations - Circular 6.10

To

**Chief Executive Officer
Governance Officers**

Date

8 February 2017

Contact

Andrea Malone

Email: andrea.malone@lga.sa.gov.au

Response Required

No

Summary

New delegations are available under the Local Nuisance and Litter Control Regulations.

New delegations are available under the Local Nuisance and Litter Control Regulations.

The delegations have been included in the main template, under the heading [Local Nuisance and Litter Control Act and Regulations](#) which is available on this link.

The [Table of Updates](#) is available here.

The delegations relate primarily to the nuisance provisions, which commence on 1 July 2017. The only delegation relating to the littering provisions is in relation to imposing a charge on the land for failure to comply with a notice.

The [subdelegations template](#) has also been updated and is available here.

For further information please contact Andrea Malone (andrea.malone@lga.sa.gov.au)

LOCAL GOVERNMENT ASSOCIATION
UPDATES OF DELEGATION TEMPLATES ON WEBSITE

(Note: Paragraph references below refer to updated version – As at 19 January 2017)

Act Document/ Page on Website	Para number in instrument which contain changes	Section number of Act	Whether change is Addition/ Amendment/ Deletion	Reason for change	Date of latest version	Recommendation
Instrument of Delegation under the Local Nuisance and Litter Control Act 2016 and Local Nuisance and Litter Control Regulations 2017	18	Reg 5	Addition	New Regulations	19/1/2017	Adopt updated instrument as soon as possible.
	19.1	Reg 6(1)(a)(ii)	Addition	New Regulations	19/1/2017	
	19.2	Reg 6(2)	Addition	New Regulations	19/1/2017	
	19.3	Reg 6(3)	Addition	New Regulations	19/1/2017	
	20	Reg 12	Addition	New Regulations	19/1/2017	
	21.1	Reg 13(2)(a)	Addition	New Regulations	19/1/2017	
	21.2	Reg 13(2)(f)	Addition	New Regulations	19/1/2017	
	21.3	Reg 13(2)(g)	Addition	New Regulations	19/1/2017	
	21.4	Reg 13(3)	Addition	New Regulations	19/1/2017	
	22	Reg 15(1)	Addition	New Regulations	19/1/2017	
	23	Reg 16	Addition	New Regulations	19/1/2017	
	24	Reg 17	Addition	New Regulations	19/1/2017	

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**INSTRUMENT OF DELEGATION UNDER THE
LOCAL NUISANCE AND LITTER CONTROL ACT 2016 AND
LOCAL NUISANCE AND LITTER CONTROL REGULATIONS 2017**

NOTES

1. Conditions or Limitations: conditions or limitations may apply to the delegations contained in this Instrument. Refer to the Schedule of Conditions at the back of this document.
2. Refer to the relevant Council resolution(s) to identify when these delegations were made, reviewed and or amended.

POWERS AND FUNCTIONS DELEGATED IN THIS INSTRUMENT

1. Authorised Officers	
1.1	The power pursuant to Section 12(3) of the Local Nuisance and Litter Control Act 2016 (the Act), to appoint:
1.1.1	specified officers or employees of the Council; or
1.1.2	a specified class of officers or employees of the Council,
	to be authorised officers for the purposes of the Act.
1.2	The power pursuant to Section 12(4) of the Act to make an appointment subject to conditions specified in the instrument of appointment.
1.3	The power pursuant to Section 12(6) of the Act to, at any time, revoke an appointment, or vary or revoke a condition specified in the instrument of an appointment or impose a further such condition.
2. Identity Cards	
2.1	The duty pursuant to Section 13(2) of the Act where the Minister has not designated a card issued by the Council to an authorised officer appointed by the Council as an identity card for the purposes of the Act, to issue an authorised officer appointed under the Act, with an identity card in a form approved by the Minister:

FXD\INSTRUMENT OF DELEGATION UNDER THE LOCAL NUISANCE AND LITTER CONTROL ACT 2016 AND LOCAL NUISANCE AND LITTER CONTROL REGULATIONS 2017.DOC Updated: 19 January 2017

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**INSTRUMENT OF DELEGATION UNDER
THE LOCAL NUISANCE AND LITTER CONTROL ACT 2016 AND
LOCAL NUISANCE AND LITTER CONTROL REGULATIONS 2017**

2.1.1	containing the person's name and a recent photograph of the person; and
2.1.2	stating that the person is an authorised officer for the purposes of the Act; and
2.1.3	specifying the name of the Council.
2.2	The duty pursuant to Section 13(3) of the Act to issue an identity card as soon as is reasonably practicable after the appointment is made.
3.	Limit of Area of Authorised Officers Appointed by Councils
3.1	The power pursuant to Section 15(a) of the Act to agree in writing to an authorised officer appointed by another council exercising powers under the Act in the Council's area.
4.	Provisions Relating to Seizure
4.1	The duty pursuant to Section 16(1)(a) of the Act if a substance, material or thing has been seized under Division 3 of the Act, to hold the substance, material or thing seized pending proceedings for an offence against the Act.
4.2	The power pursuant to Section 16(1)(a) of the Act, on application, authorise the release of the substance, material or thing seized to the person from whom it was seized, or to any person who had legal title to it at the time of its seizure, subject to such conditions as the delegate thinks fit.
4.3	The power pursuant to Section 16(1)(e) of the Act if a person is, under section 16 of the Act, entitled to recover any substance, material or thing, to request the person do so.
4.4	The power pursuant to Section 16(1)(f) of the Act to direct that any substance, material or thing forfeited under Section 16 of the Act be disposed of.
5.	Exemptions from Application of Section 18
5.1	The power pursuant to Section 19(1) of the Act to declare by notice in writing in accordance with Section 19 of the Act that a person is exempt from the application of Section 18 of the Act in respect of a specified activity to be carried on in the Council's area.
5.2	The power pursuant to Section 19(2) of the Act to require an application for a declaration under Section 19 of the Act made to the Council to be accompanied by any other information in connection with the application that the delegate may require.

FXD\INSTRUMENT OF DELEGATION UNDER THE LOCAL NUISANCE AND LITTER CONTROL ACT 2016 AND
LOCAL NUISANCE AND LITTER CONTROL REGULATIONS 2017.DOC

Updated: 19 January 2017

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**INSTRUMENT OF DELEGATION UNDER
THE LOCAL NUISANCE AND LITTER CONTROL ACT 2016 AND
LOCAL NUISANCE AND LITTER CONTROL REGULATIONS 2017**

5.3	The duty pursuant to Section 19(3) of the Act to not make a declaration under Section 19 of the Act unless the delegate is satisfied that:
5.3.1	there are exceptional circumstances that justify the making of the declaration; and
5.3.2	the applicant's nuisance management plan adequately sets out the measures that the person will take to prevent, minimise or address any anticipated adverse effects from the specified activity on the amenity value of the area concerned.
5.4	The power pursuant to Section 19(4) of the Act to make a declaration unconditional or subject to conditions, including (but not limited to) conditions relating to:
5.4.1	the permitted times or periods of time for carrying on the activity; or
5.4.2	the manner of carrying on the activity.
5.5	The power pursuant to Section 19(5) of the Act to, by further notice in writing, vary or revoke a declaration under Section 19 of the Act.
5.6	The:
5.6.1	power pursuant to Section 19(7) of the Act to determine the website for publishing a declaration made under Section 19 of the Act and any variations of the declaration; and
5.6.2	duty pursuant to Section 19(7) of the Act to publish a declaration made under Section 19 of the Act and any variations of the declaration, on a website determined by the Council or the delegate.
6.	Disposing of Litter
6.1	The power pursuant to Section 22(3)(a)(i) of the Act to provide a bin or other receptacle in the Council's area for the disposal of litter.
6.2	The power pursuant to Section 22(3)(a)(ii) of the Act to approve or authorise the manner of the disposal of litter in the Council's area.
7.	Liability of Vehicle Owners
7.1	The duty pursuant to Section 26(3) of the Act, to accompany an expiation notice or expiation reminder notice given under the Expiation of Offences Act 1996 to the owner of a vehicle for an alleged offence against Section 26 of the Act involving the vehicle with a notice inviting the owner, if he or she was not the alleged principal offender, to provide the Council or officer specified in

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	the notice, within the period specified in the notice, with a statutory declaration:
7.1.1	setting out the name and address of the person who the owner believes to have been the alleged principal offender; or
7.1.2	if he or she had transferred ownership of the vehicle to another prior to the time of the alleged principal offence and has complied with the Motor Vehicles Act 1959 or the Harbors and Navigation Act 1993 (as the case may require) in respect of the transfer – setting out details of the transfer (including the name and address of the transferee).
7.2	The power pursuant to Section 26(4) of the Act, to bring a prosecution for an offence against Section 26 of the Act against one of the owners or against some or all of the owners jointly as co-defendants.
7.3	The duty pursuant to Section 26(5) of the Act, before proceedings are commenced against the owner of a vehicle for an offence against Section 26 of the Act to send the owner a notice:
7.3.1	setting out particulars of the alleged principal offence; and
7.3.2	inviting the owner, if he or she was not the alleged principal offender or the owner of the vehicle at the time of the alleged principal offence, to provide the Council, within 21 days of the date of the notice, with a statutory declaration setting out any matters referred to in subsection 3(a) and (b).
7.4	The duty pursuant to Section 26(9) of the Act, if:
7.4.1	an expiation notice is given to a person named as the alleged principal offender in a statutory declaration under Section 26, or
7.4.2	proceedings are commenced against such a person,
	to accompany the notice or summons, as the case may be, with a notice setting out particulars of the statutory declaration that named the person as the alleged principal offender.
7.5	The duty pursuant to Section 26(10) of the Act to not include in the particulars of the statutory declaration provided to the alleged principal offender the address of the person who provided the statutory declaration.
8.	Notification of EPA of Serious or Material Environmental Harm
8.1	The duty pursuant to Section 29 of the Act, if the delegate has reason to believe that an offence committed under Sections 18 or 22 of the Act has, or

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	may have, resulted in material environmental harm, or serious environmental harm, within the meaning of the Environment Protection Act 1993, to, as soon as practicable, notify the Environment Protection Authority of that belief.
9. Nuisance and Litter Abatement Notices	
9.1	The power pursuant to Section 30(1)(a) of the Act to issue a nuisance abatement notice for or in connection with securing compliance with Part 4 Division 1 of the Act.
9.2	The power pursuant to Section 30(1)(b) of the Act to issue a litter abatement notice for or in connection with securing compliance with Part 4 Division 2 of the Act.
9.3	The:
9.3.1	duty pursuant to Section 30(2) of the Act in relation to a notice under Section 30 of the Act to ensure it:
9.3.1.1	is in the form of a written notice served on the person to whom it is issued; and
9.3.1.2	specifies the person to whom it is issued (by name or by a description sufficient to identify the person); and
9.3.1.3	specifies the purpose for which it is issued; and
9.3.2	power pursuant to Section 30(2) of the Act, in relation to a notice under Section 30 of the Act, to:
9.3.2.1	direct two or more persons to do something specified in the notice jointly; and
9.3.2.2	impose a requirement that the person do one or more of the following:
(a)	discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice;
(b)	not carry on a specified activity except at specified times or subject to specified conditions;
(c)	take specified samples or conduct specified tests, examinations, monitoring or analyses at specified times or intervals or for a specified period or until

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	further notice;
(d)	furnish to the Council specified results or reports within a specified period;
(e)	clean up litter that the Council or delegate considers to have been caused by a contravention of this Act;
(f)	make good any damage to property that the Council or delegate considers to have been caused by a contravention of this Act;
(g)	prepare, in accordance with specified requirements and to the satisfaction of the Council or delegate, a plan of action for the purposes of securing compliance with any requirement of the Act or preventing any future contravention of the Act;
(h)	take such other specified action in a specified way, and within a specified period or at specified times or in specified circumstances; and
(i)	in the case of a litter abatement notice, impose a requirement that the person prepare, in accordance with specified requirements and to the satisfaction of the Council or delegate, a plan of action for the purposes of:
	A. preventing the escape of litter from business premises; or
	B. keeping a specified area (not exceeding 100 metres) around business premises free from litter; and
(j)	impose any other requirement prescribed by regulation; and
(k)	ensure it states that the person may, within 14 days, appeal against the notice to the Environment Resources and Development Court.
9.4	The power pursuant to Section 30(3) of the Act to issue a notice under Section 30 of the Act jointly with one or more other councils to prevent the person contravening a provision of the Act in those council areas.
9.5	The power pursuant to Section 30(4) of the Act to issue a notice under

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	Section 30 of the Act that relates to an activity or conditions on premises to:
9.5.1	the owner or occupier of the premises; or
9.5.2	a person who has the management or control of the premises; or
9.5.3	a person who is the trustee of a person referred to in paragraph (a) or (b) or Section 30(4) of the Act, or is managing the affairs of such a person on some other basis.
9.6	The duty pursuant to Section 30(6) of the Act, if an emergency notice issued orally, to advise forthwith the person to whom the notice is issued of the person's right to appeal against the notice to the Environment, Resources and Development court.
9.7	The power pursuant to Section 30(8) of the Act, to, by written notice served on a person to whom a notice under section 30 of the Act has been issued by the Council, vary or revoke the notice.
10.	Action on Non-compliance with Notice
10.1	The power pursuant to Section 31 of the Act, if the requirements of a nuisance abatement notice or litter abatement notice issued by Council are not complied with, to take any action required by the notice.
10.2	The power pursuant to Section 31(2) of the Act to authorise a person to take action under section 31(1) of the Act on behalf of the Council.
10.3	The duty pursuant to Section 30(3) of the Act, if the delegate authorises a person to take action under section 31(2) of the Act to issue the person with an instrument of authority.
10.4	The power pursuant to Section 31(5) of the Act to recover the reasonable costs and expenses incurred by the Council in taking action under Section 31 of the Act as a debt from the person who failed to comply with the requirements of the notice.
10.5	The power pursuant to Section 31(6) of the Act, if an amount is recoverable from a person under Section 31 of the Act, to by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid.
11.	Civil Remedies
11.1	The power pursuant to Sections 33(1) and (6) of the Act to apply to the

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	Environment, Resources and Development court for one or more of the following orders:
11.1.1	if a person has engaged, is engaging or is proposing to engage in conduct in contravention of the Act – an order restraining the person from engaging in the conduct and, if the court considers it appropriate to do so, requiring the person to take any specified action;
11.1.2	if a person has refused or failed, is refusing or failing or is proposing to refuse or fail to take any action required by the Act – an order requiring the person to take that action;
11.1.3	if a person has caused damage to property by a contravention of the Act – an order requiring the person to take specified action to make good the damage and, if appropriate, to take specified action to prevent or mitigate further damage;
11.1.4	if the Council has incurred costs or expenses in taking action to prevent or mitigate damage caused by a contravention of the Act, or to make good resulting damage – an order against the person who committed the contravention for payment of the reasonable costs and expenses incurred in taking that action;
11.1.5	if the Council has suffered injury or loss or damage to property as a result of a contravention of the Act, or incurred costs and expenses in taking action to prevent or mitigate such injury, loss or damage – an order against the person who committed the contravention for payment of compensation for the injury, loss or damage, or for payment of the reasonable costs and expenses incurred in taking that action;
11.1.6	if the court considers it appropriate to do so, an order against a person who has contravened the Act for payment to the Council.
11.2	The power pursuant to Section 33(6) of the Act to make an application under Section 33 of the Act.
11.3	The power pursuant to Section 33(8) of the Act to serve a copy of the application on the Minister within three days after filing the application with the court.
11.4	The power pursuant to Section 33(9) of the Act to apply to the court for the Council to be joined as a party to the proceedings.
11.5	The power pursuant to Section 33(10) of the Act to make an application under

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	Section 33 of the Act in a representative capacity (provided the consent of all persons on whose behalf the application is made is obtained).
11.6	The power pursuant to Section 33(11) of the Act to make an application without notice to any person.
11.7	The power pursuant to Section 33(14) of the Act to apply for an interim order without notice to any person.
11.8	The power pursuant to Section 33(19) of the Act to apply to the court to vary or revoke an order previously made under Section 33 of the Act.
12.	Minister or Council May Recover Civil Penalty in Respect of Contravention
12.1	The power pursuant to Section 34(1) of the Act, subject to Section 34 of the Act, if the delegate is satisfied that a person has committed an offence by contravening a provision of the Act, to, as an alternative to criminal proceedings, recover, by negotiation or by application to the Environment, Resources and Development court an amount as a civil penalty in respect of the contravention.
12.2	The duty pursuant to Section 34(2) of the Act to not recover an amount under Section 34 of the Act, in respect of a contravention if the relevant offence requires proof of intention or some other state of mind, and to, in respect of any other contravention, determine whether to initiate proceedings for an offence or take action under Section 34 of the Act, having regard to the seriousness of the contravention, the previous record of the offender and any other relevant factors.
12.3	The duty pursuant to Section 34(3) of the Act to not make an application to the court under Section 34 of the Act to recover an amount from a person as a civil penalty in respect of a contravention:
12.3.1	unless the Council or the delegate has served on the person a notice in the prescribed form advising the person that the person may, by written notice to the Council, elect to be prosecuted for the contravention and the person has been allowed not less than 21 days after service of the notice to make such an election; or
12.3.2	if the person serves written notice on the Council, before the making of such an application, that the person elects to be prosecuted for the contravention.
12.4	The power pursuant to Section 34(4) of the Act to recover by negotiation as a civil penalty in respect of a contravention a maximum amount being the sum of the amount specified by the Act as the criminal penalty in relation to that

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	contravention and the amount of any economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention.
12.5	The power pursuant to Section 34(5) of the Act to apply to the Environment, Resources and Development court for an order the person pay to the Council an amount as a civil penalty (but not exceeding the sum of the amount specified by the Act as the criminal penalty in relation to that contravention and the amount of any economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention).
12.6	The power pursuant to Section 34(8) of the Act, if conduct of a person constitutes a contravention of two or more provisions of the Act, to recover an amount from the person under Section 34 of the Act in relation to the contravention of one or more of those provisions (provided that the person is not liable to pay more than one amount as a civil penalty in respect of the same conduct).
12.7	The power pursuant to Section 34(13) of the Act to apply to the Attorney-General for authorisation to commence proceedings for an order under Section 34 of the Act more than three years and within 10 years after the date of the alleged contravention.
13. Statutory Declaration	
13.1	The power pursuant to Section 40 of the Act if a person is required by or under the Act to provide information to the Council, to require that the information be verified by statutory declaration and, in that event, the person will not be taken to have provided the information as required unless it has been so verified.
14. Orders in Respect of Contraventions	
14.1	The power pursuant to Section 45(1) of the Act, if, in proceedings under the Act, the court finds that the defendant contravened the Act and the contravention has resulted in injury to the Council or loss or damage to property, to apply to the court, in addition to any penalty it may impose, one or more of the following:
14.1.1	an order the person to take specified action to make good any damage and, if appropriate, to take specified action to prevent or mitigate further damage;
14.1.2	an order the person to take specified action to publicise the contravention and its consequences and any other orders made against the person;

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14.1.3	an order the person pay to the Council if the Council has incurred costs or expenses in taking action to prevent or mitigate or make good any damage (including, in the case of litter, taking action to remove or clean up, and lawfully dispose of the litter);
	the reasonable costs and expenses so incurred, or compensation for the injury, loss or damage so suffered, as the case may be, in such a manner as is determined by the Court.
14.2	The power pursuant to Section 45(2) of the Act if a person is found by a court to have contravened the Act, to apply to the court, for, in addition to any penalty it may impose, an order the person to pay to the Council an amount not exceeding the court's estimation of the amount of the economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention.
14.3	The power pursuant to Section 45(5) of the Act to apply to the court for an order under Section 45 of the Act, fixing a period for compliance and imposing any other requirements the court considers necessary or expedient for enforcement of the order.
15.	Recovery of Administrative and Technical Costs Associated with Contraventions
15.1	The power pursuant to Section 48(1) of the Act, if a person has contravened this Act and the Council:
15.1.1	has taken action to:
15.1.1.1	investigate the contravention; or
15.1.1.2	issue a nuisance abatement notice or litter abatement notice in respect of the contravention; or
15.1.1.3	ensure that the person has complied with requirements imposed in relation to the contravention by a nuisance abatement notice or litter abatement notice or by an order of a court under the Act; or
15.1.2	has, in taking such action, incurred costs and expenses in taking samples or in conducting tests, examinations, monitoring or analyses,
	to, by notice in writing served on the person, require the person to pay to the Council the reasonable costs and expenses incurred by the Council in taking such action.

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15.2	The power pursuant to Section 48(2) of the Act to specify in the notice the period within which an amount payable to the Council in accordance with a notice under Section 48 of the Act must be paid.
15.3	The power pursuant to Section 48(3) of the Act, on application by a person who has been served a notice under Section 48 of the Act to, by notice in writing:
15.3.1	extend the time for payment of an amount payable in accordance with the notice; or
15.3.2	waive payment of such an amount or reduce the amount payable.
15.4	The power pursuant to Section 48(6) of the Act, if an amount payable to the Council is not paid in accordance with Section 48 of the Act to recover the amount as a debt.
16. Assessment of Reasonable Costs and Expenses	
16.1	The duty pursuant to Section 49 of the Act, to for the purposes of the Act, assess the reasonable costs and expenses that have been or would be incurred by the Council or some other person or body in taking any action by reference to the reasonable costs and expenses that would have been or would be incurred in having the action taken by independent contractors engaged for that purpose.
17. Evidentiary Provisions	
17.1	The power pursuant to Section 50(4) of the Act to execute a certificate certifying as to the matter relating to:
17.1.1	the appointment or non-appointment of a person as an authorised officer under the Act; or
17.1.2	a delegation or authority under the Act; or
17.1.3	a notice, requirement or direction of the Council or an authorised officer under the Act; or
17.1.4	the receipt or non-receipt by the Council or an authorised officer of a notification, report or information given or required to be given or furnished to the Council or authorised officer under the Act.
17.2	The power pursuant to Section 50(5) of the act to execute a certificate detailing the costs and expenses incurred by the Council and the purpose for which they were incurred.

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18. Annual Reports by Councils	
18.1	The duty pursuant to Regulation 5 of the Local Nuisance and Litter Control Regulations 2017 (the Regulations), to, for the purposes of Section 8 of the Act, include in the Council's annual report details of:
18.1.1	the number of complaints of local nuisance or littering received by the Council; and
18.1.2	the number and nature of:
18.1.2.1	offences under the Act that were expiated; and
18.1.2.2	offences under the Act that were prosecuted; and
18.1.2.3	nuisance abatement notices or litter abatement notices issued; and
18.1.2.4	civil penalties negotiated under Section 34 of the Act; and
18.1.2.5	applications by the Council to the Court for orders for civil penalties under Section 34 of the Act and the number of orders made by the Court on those applications; and
18.1.3	any other functions performed by the Council under the Act.
19. Exemptions from Application of Section 18	
19.1	The power pursuant to Regulation 6(1)(a)(ii) of the Regulations:
19.1.1	to fix a lodgement period for an application in relation to an activity that is to take place over a period not exceeding 24 hours; and
19.1.2	to fix a lodgement period for an application in relation to an activity that is to take place over a period of 24 hours or longer.
19.2	The power pursuant to Regulation 6(2) of the Regulations, if an application for a declaration in relation to an activity is not lodged with the Council as required by Regulation 6(1)(a)(ii) of the Act, to refuse to consider the application.
19.3	The power pursuant to Regulation 6(3) of the Regulations to require the

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	following prescribed details to be contained in a site nuisance management plan to the extent relevant to the activity:
19.3.1	an assessment of the potential for local nuisance and the number of residential and commercial premises occupied by persons likely to be affected by the local nuisance (potentially affected persons);
19.3.2	a map showing:
19.3.2.1	the proposed location of the activity and the likely fixed sources of local nuisance (for example, in the case of a concert, the location and orientation of stages and speakers); and
19.3.2.2	the location of premises occupied by potentially affected persons and the distance of the premises from those sources;
19.3.3	the name and contact details of the responsible person in relation to the activity;
19.3.4	the proposed strategy for minimising, managing and monitoring the effects of the local nuisance on potentially affected persons;
19.3.5	a copy of the notice (forming part of the communication strategy) proposed to be given to those persons to notify them of the activity, which must include the following details:
19.3.5.1	the nature of the proposed activity;
19.3.5.2	the start and finish dates for the activity;
19.3.5.3	the daily start and finish times for the activity;
19.3.5.4	the anticipated sources of local nuisance generated by the activity;
19.3.5.5	the proposed measures to be implemented to minimise the local nuisance;
19.3.5.6	the name and contact details of the person who may be contacted by potentially affected persons regarding concerns or complaints in relation to the activity;
19.3.5.7	such other details as the delegate may require;
19.3.6	the proposed communication strategy with the Council, including

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	reporting by the exempt person on progress of the activity and the site nuisance management plan and any unforeseen incidents;
19.3.7	the proposed process for recording details about complaints, including:
19.3.7.1	contact details for each complainant; and
19.3.7.2	the date and time of the complaint; and
19.3.7.3	a description of the complaint; and
19.3.7.4	the nature of the activity giving rise to the complaint; and
19.3.7.5	any action taken to address the complaint.
20. Notification to EPA of Serious or Material Environmental Harm	
20.1	The duty pursuant to Regulation 12 of the Regulations, to, for the purposes of Section 29 of the Act, include in notifications to the Environment Protection Authority:
20.1.1	as many of the following details as may be in the possession of the Council:
20.1.1.1	any investigation statements from authorised officers, witnesses or suspects;
20.1.1.2	copies of relevant evidence (for example, images, photographs, video or audio recordings or transcripts, maps, reports of analyses, tests or samples, file notes, exhibit management records and any certificates under Section 50 of the Act or other relevant documents, orders, notes or information); and
20.1.2	details as to any limitation of time for prosecution or expiation of offences under the Act; and
20.1.3	details of the application of any relevant prescribed period within the meaning of Section 16 of the Act in relation to a substance, material or thing seized under Part 3 Division 3 of the Act.
21. Action on Non-compliance with Notice	
21.1	The power pursuant to Regulation 13(2)(a) of the Regulations, to:
21.1.1	for the purposes of creating the charge on land, give the

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	Registrar-General a notice, in a form determined by the delegate or the Council on the recommendation or with the approval of the Registrar-General,
21.1.1.1	setting out the amount recoverable under Section 31 of the Act; and
21.1.1.2	setting out the land in relation to which the relevant action was taken; and
21.1.1.3	requesting the Registrar-General to make a notation under Regulation 13(2) of the Regulations in relation to the relevant land.
21.2	The power pursuant to Regulation 13(2)(f) of the Regulations to, in a case where Regulation 13(2)(d)(i)(B) of the Regulations applies, recover the amount as if it were a rate constituting a charge on land under Section 144(2) of the Act.
21.3	The duty pursuant to Regulation 13(2)(g) of the Regulations, if the amount to which the charge relates is paid, to, by further notice to the Registrar-General (being a notice in a form determined by the Minister on the recommendation or with the approval of the Registrar-General), cancel the charge.
21.4	The power pursuant to Regulation 13(3) of the Regulations to recover any costs or expenses incurred by the Council in relation to creating a charge over land or cancelling such a charge under Regulation 13 of the Regulations from the owner of the land in accordance with Section 144 of the Local Government Act 1999.
22.	Payment of Fees by Instalments
	The power pursuant to Regulation 15(1) of the Regulations to, in allowing the payment of a fee under the Act or the Regulations by instalments, add to each amount payable as an instalment a charge by way of interest, or an administrative fee, determined by the delegate or the Council (as the case may be).
23.	Waiver or Refund of Fees
	The power pursuant to Regulation 16 of the Regulations to waive or refund a fee or other amount (or part of a fee or other amount) payable under the Act or the Regulations if the delegate is satisfied that it is appropriate to do so in a particular case.

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24. Recovery of Fees

The power pursuant to Regulation 17 of the Regulations to recover a fee or other amount payable by a person under the Act or Regulations as a debt by action in a court of competent jurisdiction.

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LOCAL NUISANCE AND LITTER CONTROL REGULATIONS 2017.DOC Updated: 19 January 2017

- 18 -

**INSTRUMENT OF DELEGATION UNDER
THE LOCAL NUISANCE AND LITTER CONTROL ACT 2016 AND
LOCAL NUISANCE AND LITTER CONTROL REGULATIONS 2017**

SCHEDULE OF CONDITIONS

**CONDITIONS OR LIMITATIONS
APPLICABLE TO DELEGATIONS
CONTAINED IN THIS INSTRUMENT**

[Instructions for use: any conditions or limitations which apply to delegations under this Act should be inserted here – DELETE this note once conditions/limitations are entered. If no conditions apply insert 'NIL']

Paragraph(s) in instrument to which conditions/limitations apply	Conditions / Limitations
Nil	Nil

ITEM	3.6.2
	RESOURCES AND GOVERNANCE COMMITTEE
DATE	20 March 2017
HEADING	SA Ombudsman's Audit Report on Councils Internal Review Procedures
AUTHOR	Joy Rowett, Governance Coordinator, CEO and Governance
CITY PLAN LINKS	4.3 Have robust processes that support consistent service delivery and informed decision making. 4.3 Have robust processes that support consistent service delivery and informed decision making.
SUMMARY	This report provides information with respect to the <i>Final Report of the Right of Review - Section 270 Audit regarding Internal Review of Council Decisions</i> prepared by the SA Ombudsman, which has been sent to all Councils in SA for feedback on the recommendations proposed.

RECOMMENDATION

1. The information be received.
2. The Draft Submission to the Ombudsman SA Report "*Right of Review: An audit of Local Government Internal Review of Council Decisions Procedures, November 2016*" contained within Attachment 4 to this report (3.6.2, Resources and Governance Committee, 20/03/2017) be endorsed and sent to the SA Ombudsman by 31 March 2017.

ATTACHMENTS

This document should be read in conjunction with the following attachments:

1. Right of Review - An audit of Local Government Internal Review of Council Decisions Procedures, November 2016
2. LGA Circular 51.7 - Ombudsman's Audit Report on Councils' Internal Review Procedures
3. City of Salisbury Internal Review of Council Decision Policy and Procedure
4. Draft Submission to SA Ombudsman re Right of Review - An audit of Local Government Internal Review of Decisions Procedure

1. BACKGROUND

- 1.1 In June 2015 the SA Ombudsman wrote to all councils to advise that he considered it in the public interest to conduct a review of councils' compliance with the requirements of section 270 of the *Local Government Act 1999* for the internal review of council decisions.

- 1.2 As part of that review, the SA Ombudsman conducted an audit of 12 councils, including the City of Salisbury, on their practices and procedures with respect to internal review of council decisions.
- 1.3 The SA Ombudsman has now finalised his Audit, prepared a Final Report (Attachment 1) in which he has made seven recommendations and has asked Councils to consider and respond to the Final Report by 31 March 2017.

2. CONSULTATION / COMMUNICATION

2.1 Internal

- 2.1.1 LGA Circular 51.7, attaching a copy of the Review Report and dated 19 December 2016 (Attachment 2) was emailed to the Elected Members, Executive Team, Manager Governance and Governance Project Officer on 19 December 2016.

2.2 External

- 2.2.1 Nil.

3. REPORT

- 3.1 In April 2015 the SA Ombudsman conducted a desktop evaluation of processes and procedures used by councils regarding the internal review of council decisions in accordance with Section 270 of the *Local Government Act 1999*.
- 3.2 The evaluation also included an examination of the Section 270 internal review policy/procedure documents of a selected group of 12 councils, of which the City of Salisbury was one. In December 2015, the SA Ombudsman conducted follow-up interviews with the 12 councils and in July 2016 the provisional findings we sent out to those 12 councils for preliminary comment.
- 3.3 Council has been advised via the Office for Local Government that its Internal Review of Council Decision Policy (Attachment 3) complies with the provisions of section 270 of the *Local Government Act 1999*.
- 3.4 The SA Ombudsman has now released his Final Report on the Audit which makes seven recommendations. Councils have been asked to respond to the Report by 31 March 2017.
- 3.5 The findings and recommendations set out in the body of the report are directed at achieving change in the use of the section 270 procedures across councils and aim to:
 - 3.5.1 Address administrative deficiencies;
 - 3.5.2 Guide councils to implement changes that can improve their administrative processes;
 - 3.5.3 Improve the delivery of services; and
 - 3.5.4 Improve the standard of public administration in South Australian councils.

3.6 Those findings and recommendations are summarised as follows:

3.6.1 Availability of internal review policy to the public

SA Ombudsman - Conclusion

Audited councils all recognise the importance of making their internal review of decisions procedure available to the public. However, most councils do not actively promote the procedure, preferring to steer complainants towards informal or negotiated procedures to resolve grievances. Whilst this is legitimate, I consider that councils should make people aware of their right to a formal review of decision.

SA Ombudsman - Recommendation 1

That all councils highlight a direct link on their website homepage to a plain English description of the procedure available for making an application for internal review of council decision. The procedure could usefully be linked to the council's complaint handling policy information that also outlines steps that can be taken for informal resolution of complaints.

Council – Proposed Response and Comments

City of Salisbury supports Recommendation 1.

Implementation of this recommendation would assist in making the Internal Review of Decision Policy/Procedure more accessible to the public. In addition, including a link or reference to Council's complaint handling policy would assist with understanding of the complaint process in totality and provide information on resolution pathways available to the public.

Council's current Internal Review of Council Decisions Policy and Procedure and Customer Compliments, Comments and Complaints Policy already provide references to the other policy/procedure.

3.6.2 Compliance with the Local Government Act

SA Ombudsman - Conclusion

Despite an earlier Ombudsman SA audit on complaint handling conducted in 2011, half of the 12 audited councils in this survey were still not compliant with the law as it applies to grievances that relate to the impact that any declaration of rates or service charges may have had on ratepayers. All audit councils accept that this omission needs to be remedied.

SA Ombudsman - Recommendation 2

That all councils ensure that their internal review of decisions procedure is fully compliant with the requirements of section 270 of the *Local Government Act 1999*. Further, that all council CEOs confirm in writing to the Ombudsman their full compliance with section 270 of the Act by 31 March 2017.

Council – Proposed Response and Comments

City of Salisbury supports Recommendation 2.

There is value in an active review of the Internal Review of Decisions procedure's compliance with the requirements of section 270 of the

Local Government Act 1999 and the Chief Executive Officer confirming the current procedure meets those requirements.

The City of Salisbury's Internal Review of Council Decisions Policy is fully compliant with the requirements of section 270 of the *Local Government Act 1999*, including in particular the provisions of section 270(2)(ca) for the prompt dealing of applications concerning the impact that any declaration of rates or service charges may have had on ratepayers.

This response also addresses the requirement for the City of Salisbury to confirm in writing its full compliance with Section 270 of the Act.

3.6.3 Time Limits on applications for review

SA Ombudsman - Conclusion

Council section 270 procedures allow for varying or no time limits for acceptance of applications for internal review of decisions. The Act is silent on the issue and there is no fetter on applying a time limit. There is an argument for consistency in approach across all councils. Most councils consider that a period of six months or more is appropriate.

Councils are mindful that section 270 reviews may be resource intensive and are reluctant to consider older matters when no application was received at or near the time of decision.

SA Ombudsman - Recommendation 3

That all councils include a reference to a six month time limit for accepting internal review of council decision applications in a revised version of their internal review of decisions procedure. Consideration should also be given to the exercise of a discretion by councils to allow a longer time limit to apply in particular cases.

Council - Proposed Response and Comments

City of Salisbury expresses partial support for Recommendation 3.

The City of Salisbury supports the first part of this recommendation on the basis that this provision recognises the time taken to implement decisions, and the likelihood of the public not being aware of the processes available to them to seek a review of a council decision. Allowing a period of 6 months provides sufficient time for individuals to make contact with a council to express concerns about an issue, then be provided with information about options available to them followed by sufficient time to make an application.

Council's current Internal Review of Council Decisions Policy provides for the six-month time limit for accepting internal review of Council decision applications.

The City of Salisbury does not support the exercise of a discretion by councils to allow a longer time limit to apply in particular cases. Determination of the time period needs to be objective providing some certainty to complainants and councils as to the period within which a review can be requested.

3.6.4 Decisions to which the internal review process can apply/cannot apply***SA Ombudsman - Conclusion***

There is a wide range of policy positions determined by councils in South Australia on appeal and review arrangements in the areas of planning, development and expiation of offences. Some councils wrongly decline to consider a section 270 application for review in these categories on the basis that the area is covered, or should be covered, by the provisions of legislation outside the Local Government Act, e.g. the Development Act.

SA Ombudsman - Recommendation 4

That all councils revise the part of their internal review of decision procedure that deals with 'Matters outside the scope of the policy and procedures' to explicitly state that matters that fall outside statutory appeals procedures will be considered for the conduct of a section 270 review on the merits of the individual application. Further, that councils discuss with the LGASA the desirability of including this commitment in the LGASA *Internal Review of a Council Decision Model Policy and Procedure*.

Council – Proposed Response and Comments

City of Salisbury supports Recommendation 4.

In relation to matters that fall outside statutory appeal procedures, the City of Salisbury agrees there may be occasions where a matter should be afford consideration of a review. In those circumstances the merits of the matter should be considered on a case by case basis. Given this, it would be appropriate for information to that *effect* to be included within the LGASA *Internal Review of a Council Decision Model Policy and Procedure*.

It is noted that in its Circular 51.7 dated 19 December 2016, in light of the SA Ombudsman's Final Report, the LGA has undertaken to review and revise its model policy and procedure.

3.6.5 Independent conduct of an internal review of decision***SA Ombudsman - Conclusion***

Many South Australian councils have developed internal review practices that seek to manage situations where an original decision-maker (often the CEO) may have a conflict of interest. Whilst internal senior delegation of responsibility is a preferred option, many councils are willing to involve independent reviewers where possible and when available.

SA Ombudsman - Recommendation 5

That all councils, through the auspices of regional Local Government Associations, consider and report to the Ombudsman by 31 March 2017 on the option of developing regional panels of independent reviewers who can assist councils with complex review matters.

Council – Proposed Response and Comments

City of Salisbury does not support Recommendation 5.

Councils should retain the discretion and flexibility to engage resources to assist with the delivery of services in a manner that achieves greatest efficiency and effectiveness for the community.

Whilst there could be merit in an LGA convened panel of independent reviewers, similar to the Local Government Governance Panel, there should be no obligation on councils to access the panel of providers.

It is the practice of the City of Salisbury to evaluate each request for review of decision and make a decision as to the most appropriate resource to undertake the review. Where necessary, external resources have been engaged in accordance with Council's Procurement Policy.

3.6.6 Matter types and learning outcomes from internal reviews of decision

SA Ombudsman - Conclusion

The statistics from the Local Government Grants Commission show that section 270 applications received by councils have doubled in the past seven years. Whilst the numbers are still low, and concentrated largely in metropolitan councils, there is some evidence that councils are willing to use the internal review mechanism more now than in the past. Councils have shown an ability to analyse review outcomes to inform better administrative practice.

SA Ombudsman - Recommendation 6

That all councils periodically evaluate their section 270 review investigations and document learning outcomes relevant to their administrative practices and functional responsibilities. That, as appropriate, these learning outcomes are shared with the Local Government Governance and Policy Officers Network (GPON) and relevant local government interests.

Council – Proposed Response and Comments

City of Salisbury does not support Recommendation 6.

The City of Salisbury supports the practice of reviewing investigations and documenting learning outcomes relevant to administrative practices, however does not support the imposition of an obligation to share the learning outcomes with parties external to the Council. This option should be at the discretion of the Council and should take into consideration the subject matter of each review (i.e. whether the review relates to sensitive or confidential information).

Members of GPON, including staff from the City of Salisbury, regularly share information with a view to streamlining processes and ensuring consistency across the local government sector. This may include consideration of section 270 review experiences from time to time but there should be no obligation to do so.

3.6.7 Do councils need more governance support?**SA Ombudsman - Conclusion**

The evidence from councils about the value of the GPON as a forum for issues of common interest in governance policy and practice is strong. A majority of South Australian councils now participate and there is a clear body of support for GPON to extend its influence and relevance across the local government sector in its area of expertise.

SA Ombudsman - Recommendation 7

That the existing membership and leadership of GPON consider if there is a case to be made to all councils for an expanded role for the Network - whether this be expanded membership development of a website and/or project and research relevant to governance standards in councils - or other governance priority identified by the Network

Council – Proposed Response and Comments

City of Salisbury considers Recommendation 7 to be a matter for consideration of the Governance and Policy Officers Network.

It is noted that the GPON is primarily an informal group that shares information in relation to operational governance/policy matters.

The Terms of Reference of the GPON state that:

“The purpose of the South Australian Local Government Governance and Policy Officers’ Network (Network) is to meet regularly to address issues of common interest in the areas of governance and policies for the benefit of each participating Council, individuals and the advancement of governance best practice principles throughout Local Government in South Australia.”

The City of Salisbury is actively represented by staff at GPON meetings who regularly participate in discussions with respect to governance both at meetings and by email with other Network members.

- 3.7 Council staff have considered the SA Ombudsman’s Final Report and prepared a draft submission addressing the seven recommendations, which is provided at Attachment 4 for Council’s consideration and endorsement.
- 3.8 The SA Ombudsman expects to finalise an implementation report on council responses to his recommendations to be forwarded to the Minister for Local Government by 30 June 2017.

4. CONCLUSION / PROPOSAL

- 4.1 Council is asked to consider the draft submission to the SA Ombudsman on the Final Report on the Right of Review Section 270 Audit dated November 2016 as contained within Attachment 4 to this report and endorse the submission with or without amendments.

CO-ORDINATION

Officer:	Executive Group	MG
Date:	14/03/2017	08/03/2017



Enquiries: Mr Kym Davey
Telephone: (08) 8226 8681
Ombudsman reference: 2015/07607

Mr John Harry
Chief Executive Officer
City of Salisbury
PO Box 8
SALISBURY SA 5108

Dear Mr Harry

SECTION 270 AUDIT - FINAL REPORT

In June 2015 I wrote to all councils to advise you that I consider it in the public interest to conduct a review of council compliance with section 270 requirements for internal review of council decisions.

Since that time, I have also conducted an audit of 12 councils' practices and procedures concerning internal review of council decisions.

Please find enclosed a hardcopy of my audit final report, titled *Right of Review*.

I draw your attention to the seven recommendations made in the report. In particular, Recommendations 2 and 5 include a report date of **31 March 2017**. I request that your council consider all recommendations and respond to me in writing by that date.

I expect to finalise an implementation report on council responses to my recommendations to be forwarded to the Minister for Local Government by 30 June 2017.

I take this opportunity to thank you for the cooperation and contribution of your council in this important area of local government accountability. I particularly acknowledge the assistance of the 12 councils involved in this stage of the audit.

Please direct enquiries on the audit report to Mr Kym Davey, on (08) 8226 8681 or at davey.kym@ombudsman.sa.gov.au. The report is also accessible on my website at <http://www.ombudsman.sa.gov.au/publications/audit-reports/>

Yours sincerely

A handwritten signature in black ink, appearing to read 'Wayne Lines'.

Wayne Lines
SA OMBUDSMAN

18 November 2016

Encl. Audit Final Report - *Right of Review*

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Ombudsman SA

RIGHT OF REVIEW

**An audit of Local Government Internal Review of
Council Decisions Procedures**

November 2016



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FOREWORD

This report documents my findings and recommendations relevant to the operation of the internal review of decisions provisions in the *Local Government Act 1999*.

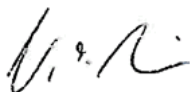
Local government councils in South Australia are required by the Act to provide a process for the internal review of council decisions. The obligation is part of the broader set of requirements to have in place policies, practices and procedures for responding to complaints about the actions of the council, employees of the council, or other persons acting on behalf of the council.

The section 270 internal review of decision process is an important mechanism for the resolution of disputes and complaints about decisions made by councils. As such, the review process is an essential complaint handling tool for local government and for the management of complaints made to my Office.

A previous Ombudsman SA audit on complaint handling in SA councils identified that there was a low take-up rate by the public of the section 270 internal review of council decisions option. On the evidence from this audit, that take-up rate is now increasing significantly.

This report examines some of the key issues for councils in delivering a fair internal review of decision process. It also explores how councils can use internal reviews to drive their administrative improvement and service excellence.

I take this opportunity to thank the twelve councils who cooperated with my Office in the conduct of this audit. Together with all other councils, and with local government sector organisations, I believe there is an opportunity to build more trust in the accountability of local government through a more confident use of the review of council decisions mechanism.



Wayne Lines
SA OMBUDSMAN

EXECUTIVE SUMMARY

In April 2015, my Office conducted a desktop evaluation to assess the current state of policies/procedures of councils regarding the internal review of council decisions. All 68 councils were assessed and the following emerged:

- 8 councils did not have an internal review policy/procedure available on their website
- 21 councils had not yet reviewed their policy by the due date
- 13 councils did not provide a date for the next review
- 15 councils had not included rate declaration issues or service charges as required by section 270(2)(ca) of the Local Government Act.

The evaluation also involved an examination of the section 270 internal review policy/procedure documents of a selected group of 12 councils, as found on their websites. The evaluation sought to identify whether council policies were compliant with section 270 of the Act and whether recommendations by the Ombudsman in his 2011 audit report have been implemented.

The desktop evaluation found that the internal review policies/procedures of five out of the 12 councils were not fully compliant with section 270 of the Act. In particular, the five councils' policies/procedures failed to refer to section 270(2)(ca), that requires provision to be made for applications relating to the impact of a declaration of rates or service charges. There also appeared to be a wide variation in council methods for citing exclusions, despite the Local Government Association of South Australia (LGASA) promoting an Internal Review of a Council Decision Model Policy and Procedure in 2012.

SUMMARY OF RECOMMENDATIONS

The following findings and recommendations are made in the body of the report under the headings that I adopted for the conduct of the audit. They are directed at achieving change in the use of the section 270 procedures across councils, and aim to:

- address administrative deficiencies
- guide councils to implement changes that can improve their administrative processes
- improve the delivery of services
- improve the standard of public administration in South Australian councils.

Availability of internal review policy to the public

Conclusion

Audited councils all recognise the importance of making their internal review of decisions procedure available to the public. However, most councils do not actively promote the procedure, preferring to steer complainants towards informal or negotiated procedures to resolve grievances. Whilst this is legitimate, I consider that councils should make people aware of their right to a formal review of decision.

Recommendation 1

That all councils highlight a direct link on their website homepage to a plain English description of the procedure available for making an application for internal review of council decision. The procedure could usefully be linked to the council's complaint handling policy information that also outlines steps that can be taken for informal resolution of complaints.

Executive Summary

Compliance with the Local Government Act

Conclusion

Despite an earlier Ombudsman SA audit on complaint handling conducted in 2011, half of the 12 audited councils in this survey were still not compliant with the law as it applies to grievances that relate to the impact that any declaration of rates or service charges may have had on ratepayers. All audit councils accept that this omission needs to be remedied.

Recommendation 2

That all councils ensure that their internal review of decisions procedure is fully compliant with the requirements of section 270 of the *Local Government Act 1999*. Further, that all council CEOs confirm in writing to the Ombudsman their full compliance with section 270 of the Act by 31 March 2017.

Time limits on applications for review

Conclusion

Council section 270 procedures allow for varying or no time limits for acceptance of applications for internal review of decisions. The Act is silent on the issue and there is no fetter on applying a time limit. There is an argument for consistency in approach across all councils. Most councils consider that a period of six months or more is appropriate. Councils are mindful that section 270 reviews may be resource intensive and are reluctant to consider older matters when no application was received at or near the time of decision.

Recommendation 3

That all councils include a reference to a six month time limit for accepting internal review of council decision applications in a revised version of their internal review of decisions procedure. Consideration should also be given to the exercise of a discretion by councils to allow a longer time limit to apply in particular cases.

Decisions to which the internal review process can apply/cannot apply

Conclusion

There is a wide range of policy positions determined by councils in South Australia on appeal and review arrangements in the areas of planning, development and expiation of offences. Some councils wrongly decline to consider a section 270 application for review in these categories on the basis that the area is covered, or should be covered, by the provisions of legislation outside the Local Government Act, e.g. the Development Act.

Recommendation 4

That all councils revise the part of their internal review of decision procedure that deals with 'Matters outside the scope of the policy and procedures' to explicitly state that matters that fall outside statutory appeals procedures will be considered for the conduct of a section 270 review on the merits of the individual application. Further, that councils discuss with the LGASA the desirability of including this commitment in the LGASA *Internal Review of a Council Decision Model Policy and Procedure*.

Independent conduct of an internal review of decision

Conclusion

Many South Australian councils have developed internal review practices that seek to manage situations where an original decision-maker (often the CEO) may have a conflict of interest. Whilst internal senior delegation of responsibility is a preferred option, many councils are willing to involve independent reviewers where possible and when available.

Recommendation 5

That all councils, through the auspices of regional Local Government Associations, consider and report to the Ombudsman by 31 March 2017 on the option of developing regional panels of independent reviewers who can assist councils with complex review matters.

Matter types and learning outcomes from internal reviews of decision

Conclusion

The statistics from the Local Government Grants Commission show that section 270 applications received by councils have doubled in the past seven years. Whilst the numbers are still low, and concentrated largely in metropolitan councils, there is some evidence that councils are willing to use the internal review mechanism more now than in the past. Councils have shown an ability to analyse review outcomes to inform better administrative practice.

Recommendation 6

That all councils periodically evaluate their section 270 review investigations and document learning outcomes relevant to their administrative practices and functional responsibilities. That, as appropriate, these learning outcomes are shared with the Local Government Governance and Policy Officers Network (GPON) and relevant local government interests.

Do councils need more governance support?

Conclusion

The evidence from councils about the value of the GPON as a forum for issues of common interest in governance policy and practice is strong. A majority of South Australian councils now participate and there is a clear body of support for GPON to extend its influence and relevance across the local government sector in its area of expertise.

Recommendation 7

That the existing membership and leadership of GPON consider if there is a case to be made to all councils for an expanded role for the Network - whether this be expanded membership development of a website and/or project and research relevant to governance standards in councils - or other governance priority identified by the Network

1.1 Audit context and Ombudsman's jurisdiction

1. The November 2011 Ombudsman SA audit of complaint handling in South Australian councils *Valuing Complaints* identified that there was a low take-up rate by the public of the section 270 option for internal review of council decisions. The audit found that eight of the 12 councils audited had procedures in place that did not comply with the *Local Government Act 1999 (the Act)*.
2. The Ombudsman made three recommendations at that time:
 1. That all councils ensure that their internal review of decision procedure is fully compliant with the requirements of section 270 of the Local Government Act
 2. Further, that all councils consider a standard form of wording for exclusions and a statement about the exercise of discretion in accepting matters for review
 3. As an adjunct to development of complaints policy, councils should consider the merits of establishing a network or panel of independent reviewers from which to draw support for internal review processes.
3. In February 2013 the Ombudsman wrote to all councils requesting feedback on the implementation of the complaint handling audit recommendations. The responses from councils identified that only 41 of 68 councils had implemented the recommendation that all section 270 policy/procedures comply in full with the requirements established by law.
4. In April 2015, my Office conducted a desktop evaluation to assess the current state of policies/procedures of councils regarding the internal review of Council decisions. All 68 councils were assessed and the following emerged:
 - 8 councils did not have an internal review policy/procedure available on their Website
 - 21 councils had not yet reviewed their policy by the due date
 - 13 councils did not provide a date for the next review
 - 5 councils had not included rate declaration issues or service charges as required by section 270(2)(ca) of the Local Government Act.
5. The evaluation also involved an examination of the section 270 internal review policy/procedure documents of a selected group of 12 councils, as found on their websites. The evaluation sought to identify whether council policies were compliant with section 270 of the Act and whether recommendations by the Ombudsman in his 2011 audit report have been implemented.
6. The desktop evaluation found that the internal review policies/procedures of five out of the 12 councils were not fully compliant with section 270 of the LG Act. In particular, the five councils' policies/procedures failed to refer to section 270(2)(ca), which requires provision to be made for applications relating to the impact of a declaration of rates or service charges. There also appeared to be a wide variation in council methods for citing exclusions, despite the LGASA adopting and promoting a Model Policy and Procedure in 2012. There were also five councils (a different mix) that did not provide details of the applications for internal review in their Annual Report as required. As with the larger group, some of the councils also had policies that were well beyond the review dates stipulated on the policy.

Part 1 - The Audit Process

7. Section 13 of the *Ombudsman Act 1972* stipulates that I must not investigate complaints that are open to a right of appeal with another body or tribunal. In short, Ombudsman SA is a review body of last resort for complainants. Consequently, most local government complaints are referred back to councils themselves to attempt to resolve in the first instance.
8. In the year 2015-2016, my Office received 1,011 complaints about councils. 420, or 42% of them, were referred back to the council in question for action. I estimate that approximately half of these complaints were potentially section 270 review of decision matters.¹
9. For the reasons above, I considered it was in the public interest to conduct an audit of councils' practices and procedures concerning internal review of council actions. Section 14A of the Ombudsman Act provides as follows:
 - (1) If the Ombudsman considers it to be in the public interest to do so, the Ombudsman may conduct a review of the administrative practices and procedures of an agency to which this Act applies.
 - (2) The provisions of this Act apply in relation to a review under subsection (1) as if it were an investigation of an administrative act under this Act, subject to such modifications as may be necessary, or as may be prescribed.

1.2 The Audit Group

10. The selection of councils for audit was made with regard to each of the 12 state government regions and what was considered to be a good spread of population densities, geographic locations and council size.
11. In 2006, the South Australian government decided to introduce 12 administrative regions for uniform use in planning and reporting across all state government departments and agencies.
12. There are four regions in the Adelaide metropolitan area; three regions in the greater Adelaide area; and five country regions.
13. The Australian Classification of Local Governments (ACLG) was introduced in 1994 as a method of classifying local governing bodies in receipt of general financial assistance grants from the Commonwealth. The system uses a variety of urban, urban fringe, provincial city and rural codes to classify councils. In South Australia the Local Government Grants Commission uses the system to allocate grants across four council groupings based on region and size.
14. Through a process of cross referencing councils with ACLG groupings and state government regions the following selections were made for the audit:

Adelaide Metropolitan area

- Eastern Adelaide
- Northern Adelaide
- Southern Adelaide
- Western Adelaide

Council

Norwood Payneham /St Peters
City of Salisbury
City of Mitcham
City of Charles Sturt

¹ This estimate, which equals approximately 210 complaints, makes an interesting comparison with the 89 section 270 matters actually handled by councils in 2015. See data recorded on page 18 of this report.

Greater Adelaide area

- Adelaide Hills
- Barossa, Light and Lower North
- Fleurieu and Kangaroo Island

Council

Adelaide Hills Council
Town of Gawler
District Council of Yankalilla

Country regions

- Eyre and Western
- Far North
- Limestone Coast
- Murray and Mallee
- Yorke and Mid North

Council

District Council of Tumby Bay
Roxby Council
District Council of Robe
DC Loxton Waikerie
Port Pirie Regional Council

1.3 Audit Terms of Reference

15. I determined that the audit would:

- examine and assess council compliance with the section 270(1) to (9) requirements for internal review contained in the *Local Government Act 1999*
- review council methods for citing exclusions to their *Internal Review Of Council Decisions Policy* against the Local Government Association Model Policy and Procedure adopted in 2012
- identify the incidence of section 270 internal reviews conducted by SA councils and to identify any impediments or difficulties faced by councils in implementing reviews
- examine and assess the incidence of councils' engagement of an independent person or panel to conduct an internal review of decision
- examine any other matters relevant to the use of section 270 internal review procedures
- make findings and recommendations relevant to administrative improvement in councils' use of the section 270 internal review provisions.

1.4 Audit Methodology

16. The audit process was designed to proceed in several stages. Key tasks included:

- June 2015 - letter to all 68 councils announcing a Stage 1 audit, enclosing a two question Survey on compliance with section 270 of the Act. All responses to be collated and compared to 2013 Ombudsman SA survey results
- Selection of 12 audit councils - based on SA government administrative regions and a geographic and size spread of councils
- Stage 2: August 2015 - letter advising 12 councils of inclusion in audit and sending a ten part Questionnaire for completion by early September 2015
- December 2015 and January 2016 - Ombudsman follow-up interviews with 12 councils
- May 2016 - July 2016 provisional audit report preparation
- July 2016 - provisional audit report sent to 12 audit councils for comment
- October 2016 - preparation of final audit report for publication.

Part 1 - The Audit Process

1.5 Responses to the provisional report

17. In July 2016, I wrote to all 12 councils involved in the audit and asked them to provide me with their comments on the content, findings and draft recommendations made in the provisional report.²
18. I note here that there is no requirement for me to consult with agencies subject to audit under section 14A of the Ombudsman Act. Rather, I decided that the information I received from the 12 councils during the questionnaire and interview stages was best augmented by seeking feedback from them after I had had the opportunity to consider their individual submissions and make tentative findings and recommendations.
19. I received written submissions or comment from all 12 audit councils in August 2016.
20. A number of councils suggested that the LGASA should be involved in the process of responding to the audit provisional report.
21. I explained to those councils that the provisional report was a document sent to the audit councils only, that the process at that stage was confidential and that the LGASA was not a party to the audit as it was not an organisation within my jurisdiction. Having said that, I explained that I would welcome LGASA comment when the audit report was released and acknowledged that the LGASA has a critical role to play in supporting best practice in complaint handling in local government.³
22. Seven of the 12 councils agreed fully or partly with all Recommendations made in the provisional report.
23. The response to Recommendations 1 and 2 was generally supportive.
24. While most councils agreed on the premise behind Recommendation 3, there were varying views about what an appropriate time limit on applications for review should be. Four councils, (Adelaide Hills Council, Town of Gawler, DC Robe and Port Pirie RC) wholly agreed with the six month time limit based on the 'last point of contact' proposed by Recommendation 3. Only two councils, (City of Norwood Payneham & St Peters and DC Tumby Bay) advocated for a shorter time limit of three months, which had been the most popular choice at the questionnaire stage. Three councils, (City of Norwood Payneham and St Peters, City of Salisbury and City of Charles Sturt) thought that the time limit should be based on when the decision was made/recorded, as opposed to the last point of contact. Some councils expressed the view that the last point of contact could be confusing and lead to unreasonable extension of time limits. They thought a record of the decision was more definitive.
25. There were few objections and many comments in favour of the main proposition in Recommendation 4, i.e. that matters which fall outside statutory appeals procedures should be considered for the conduct of a section 270 review. Salisbury Council expressed the view of many on this issue:

In relation to matters that fall outside statutory appeal procedures...there may be occasions where a matter should be afforded consideration of a review. In those

² I have used the term 'Recommendation' hereafter in this section as shorthand for the Draft Recommendations under discussion in my provisional report.

³ I note also the very useful work done by the LGASA to develop and continually update its *Internal Review of a Council Decision: Model Policy and Procedure* for the guidance and use by SA councils.

circumstances the merits of the matter should be afforded consideration on a case by case basis. Given this, it would be appropriate for information to that effect to be included within the Review of Decisions Procedure.

The City of Norwood Payneham & St Peters agreed, adding the caveat that:

...there needs to be clarity and consistency around such a provision and this therefore could be considered as part of the Local Government Association of South Australia's Model Policy - Internal Review of Decision.

The second part of Recommendation 4 appeared to be the most contentious amongst the audit councils. There were strong objections to the internal review procedure allowing for a discretion for review 'even where a statutory appeal is available for the decision'. Most councils shared the opinion that complainants should not be allowed to pursue internal review of a decision where there is an existing statutory appeal process. On this issue, the Adelaide Hills Council represented the point succinctly:

...we do believe in the right to request a review of a council decision, however, as this process is resource intensive and requires appropriate expertise, it is considered inefficient and a waste of limited resources to provide the ability for a review of council decisions under two separate statutory appeal processes, especially where there may be a chance that the review is duplicated by different agencies at the same time.

My provisional report notes at paragraph 84 that internal review should not be used where there are statutory appeal rights available, e.g. in development approval matters. Recommendation 4 proposes that council procedures allow a *discretion* for review (and therefore does not mandate review) - and fill the gaps in the law where a complainant has no right of review (such as in the example given by Roxby Council, where an internal review was undertaken in relation to a development application because the applicant had no appeal rights). Two councils, (DC Robe and Port Pirie Regional Council) suggested that the Development Act should be amended to cover review of all planning matters. While perhaps not to that extent, some clarification of the legislation may be considered to avoid the grey area that gives rise to the confusion regarding when internal review should be available. Regardless, I have taken note of the concerns raised about duplication and a potential to confuse the public and deleted the reference to discretionary review in the final recommendation.

26. While most audit councils were open to the idea of an independent review panel, as proposed by Recommendation 5, they considered that engagement of the panel should remain at their discretion. Without the full support of councils, particularly given that most indicated a preference to resolve complaints before they reached the formal review stage, the costs of the formation of an independent review panel may end up outweighing its value. Some councils were also concerned with the potential cost of the process. Two councils, (City of Charles Sturt and Adelaide Hills Council) proposed that an independent panel of reviewers (as a discretionary option) would be best organised through the auspices of the LGASA, rather than through regional Local Government Associations. I have no disagreement with this approach if it is preferred by councils.
27. Councils were generally supportive of the proposal in Recommendation 6 that they evaluate internal reviews and document their learning outcomes. Some suggested that they already do this internally. Five councils (Norwood Payneham & St Peters, Salisbury, Charles Sturt, Adelaide Hills and Gawler), noted that they share review information with the Local Government Governance and Policy Officer's Network

Part 1 - The Audit Process

(GPON), 'with a view to streamlining processes and ensuring consistency across the local government sector'. Many commented that such sharing should be at the discretion of each council. Councils were more concerned with that part of the recommendation that suggested they share review outcomes with external parties such as the LGASA. Two councils, (City of Norwood Payneham & St Peters and City of Salisbury) further considered that this was not part of the role of the LGASA, although one council (City of Charles Sturt) considered that sharing through the LGASA to be more effective. I have taken note of these concerns and amended the final recommendation to acknowledge that sharing of review learning outcomes with external bodies should be discretionary. I have, however, retained the reference to GPON as this forum is recognised as a council auspiced entity across the local government sector.⁴

28. Three councils (City of Charles Sturt, Adelaide Hills Council and DC Tumby Bay) believed that the LGASA should be involved in facilitating Recommendation 7. It proposed investigation of a single complaints policy format incorporating the procedure for internal review of council decision. Adelaide Hills Council cites the LGASA's Model Policy process as a prospective way forward. Two councils (City of Norwood, Payneham & St Peters and City of Salisbury), considered complaint handling and internal review to be linked, but separate processes. Some suggested that it would be beneficial for there to be consistency between councils about how complainants are treated, but overall there is not strong support for a single policy framework. The City of Salisbury argued that the complaints processes should remain separate to maintain impartiality. At Salisbury complaints and internal reviews are handled by different departments - so they are conducted by different people. After reflection on the issues and various points of view, I have decided to omit draft Recommendation 7 from my final report. As suggested by a number of councils, this matter may best be pursued by councils in dialogue with the LGASA.
29. Given the references made to GPON in the examination of the issues around the development of a single model complaints policy for local government, I had cause to revisit my findings and commentary on the Network at section 5.1.3. I asked the question there: 'do councils need more governance support?' Some councils have put it to me that there is a need, in an increasingly regulated local government environment, for greater sharing of governance expertise amongst councils. Not all councils believe this is necessary. However, on balance, I decided to recommend that the GPON members and the current leadership group initiate a discussion with councils to explore this topic and to make decisions for themselves as appropriate. As such, I have added concluding remarks and a new Recommendation 7 on the topic.
30. In their responses, two councils raised the issue that arose in the provisional report of merits review versus process review. DC Tumby Bay was particularly interested in the arguments made by two councils about disallowing applications for merits review and considered that the idea of process review had a lot of value. DC Robe was also concerned with the use of merits review, which it considered did not foster consistency when it felt that the consistent application of process was paramount. This is a particularly important issue, and my report accordingly finds that the legislation provides for *both* merits and process review.
31. I have considered the submissions from all councils and taken account of them as I consider appropriate in preparing this final report. I note in particular that I have amended recommendations 3, 4, 6 and 7 from my provisional report.

⁴ See section 5.1.3 'Do councils need more governance support?' for a more detailed discussion of the role of GPON.

PART 2

THE LEGISLATIVE FRAMEWORK

Part 2 - The Legislative Framework

2.1 A right of appeal?

32. In 2016 the South Australian *Local Government Act 1934* was repealed with the passage of amendments to the successor *Local Government Act 1999*.
33. The 1934 Local Government Act contained no right of review for a decision made by the elected local government council or the administration that served it.
34. In our legal system, an appeal is the process in which cases are reviewed, where parties request a formal change to an official decision.⁵ In the courts, appeals are intended to provide a mechanism for error correction and also a process for clarifying and interpreting the law. Although appellate courts have existed for hundreds of years, common law countries did not incorporate an affirmative right to appeal into their jurisprudence until the 19th century.
35. Local government in South Australia (and elsewhere) came to consider the right to an appeal much later. The issue was canvassed at length in the Local Government Revision Committee report to the Minister of Local Government, the Hon. Geoff Virgo, in July 1970.⁶ Documenting a litany of local ratepayer complaints to the Committee about council decisions that could not be challenged, the report took account of the findings of the 1962 Whyatt Report, produced by the British Section of the International Commission of Jurists. On the 'right of appeal' in local government, Whyatt said:

The remedy available to a citizen aggrieved by an act of maladministration is the same as that available to a citizen aggrieved by a discretionary decision; it is to complain to the elected representatives of the council and try to persuade them to redress his grievance. This method of seeking redress presents serious difficulties since complaints of maladministration in local government are, in effect, complaints against a Committee of the elected representatives, rather than officials, because of the close, direct control which elected representatives exercise over the administrative processes of local government. The elected representatives are therefore, judges in their own cause and the only external checks are public criticism and the ballot-box at the next election.⁷

36. The Revision Committee report asserted that introducing a right of appeal (review) in the proposed new Local Government Act would cause council decisions to be made more carefully because councils would be aware that their determinations were now open to challenge. It was considered that this would lead to better decision making in councils. This, in turn, would 'substantially obviate the need to appeal'. The report went on to conclude that:

If local government is to survive as an effective force it must gain a very much better public image. The Committee believes that it would be greatly helped in that regard by a right of appeal. The experience with Courts of Appeal in the ordinary legal system, and the experience with ombudsmen overseas, show that the percentage of cases in which the decision needs to be reversed is much smaller than the number of cases in which the decision is upheld; but the fact that the decision can be tested is important: the ratepayer feels that he is getting a fair go - he is given an opportunity of testing his council's decision, and of testing it fairly.⁸

⁵ For the purposes of this background discussion I have located the right of review in the framework of English and Australian common law. Whilst the term 'appeal' was used in the 1970 Local Government Revision Committee report, it is more commonly associated with the function of the courts. The term 'review', with essentially the same meaning, is the subject of this audit report, and is consistent with the much more recent statutory obligation of local government.

⁶ *Report by the Local Government Act Revision Committee on Powers, Responsibilities and Organisation of Local Government in South Australia* - Parliament of South Australia, July 1970.

⁷ *ibid.* p.666. From: *The Citizen and the Administration* (the Whyatt Report) p.88.

⁸ *ibid.* p.667.

2.2 What the Parliament said

37. The 1970 Revision Committee report was a thorough and progressive study that confronted most of the administrative and representative anomalies in the legislative framework of the 1934 Act. However, it took the State Parliament another 19 years to introduce local government legislation that conformed to the principles of modern public administration. The right to review council decisions was one such reform.
38. Introducing the second reading of the Local Government Bill on 17 February 1999, the Hon Mark Brindal, Minister for Local Government, canvassed the essential elements of each chapter of the proposed legislation. He noted, at Chapter 13, that the Bill sought to establish new methods for the review of the conduct of elected members, and also brought together provisions that regulated review of actions, decisions and operations of councils. These included a new requirement for councils to put in place internal grievance procedures. He said:

There is no intention that the latter provision should impede in any way the right of citizens to approach other sources of remedy for illegal actions on the part of councils, whether the Ombudsman under the Ombudsman Act, or the courts under their various jurisdictions, or the Minister responsible to Parliament for the administration of the Local Government Act. Nonetheless it is the intention of this legislation that councils should make every effort to deal with problems locally, including those arising from their own decisions and operations.⁹

2.3 The Statute

39. Various amendments in 2011 and 2016, Section 270 of the *Local Government Act 1999* (SA) provides a process for the internal review of Council decisions. Today it reads as follows:

Section 270—Procedures for review of decisions and requests for services

- (a1) A council must develop and maintain policies, practices and procedures for dealing with—
 - (a) any reasonable request for the provision of a service by the council or for the improvement of a service provided by the council; and
 - (b) complaints about the actions of the council, employees of the council, or other persons acting on behalf of the council.
- (a2) The policies, practices and procedures required under subsection (a1) must be directed towards—
 - (a) dealing with the relevant requests or complaints in a timely, effective and fair way; and
 - (b) using information gained from the council's community to improve its services and operations.
- (1) Without limiting subsections (a1) and (a2), a council must establish procedures for the review of decisions of—
 - (a) the council;
 - (b) employees of the council;
 - (c) other persons acting on behalf of the council.
- (2) The procedures must address the following matters (and may address other matters):
 - (a) the manner in which an application for review may be made;
 - (b) the assignment of a suitable person to reconsider a decision under review;

⁹ Hansard, House of Assembly, South Australian Parliament, 17 February 1999, p.807.

Part 2 - The Legislative Framework

- (c) the matters that must be referred to the council itself for consideration or further consideration;
 - (ca) in the case of applications that relate to the impact that any declaration of rates or service charges may have had on ratepayers—the provision to be made to ensure that these applications can be dealt with promptly and, if appropriate, addressed through the provision of relief or concessions under this Act;
 - (d) the notification of the progress and outcome of an application for review;
 - (e) the time frames within which notifications will be made and procedures on a review will be completed.
- (3) A council is not entitled to charge a fee on an application for review.
- (4) A council, or a person assigned to consider the application, may refuse to consider an application for review if—
 - (a) the application is made by an employee of the council and relates to an issue concerning his or her employment; or
 - (b) it appears that the application is frivolous or vexatious; or
 - (c) the applicant does not have a sufficient interest in the matter.
- (4a) The policies, practices and procedures established under this section must be consistent with any requirement prescribed by the regulations.
- (5) A council must ensure that copies of a document concerning the policies, practices and procedures that apply under this section are available for inspection (without charge) and purchase (on payment of a fee fixed by the council) by the public at the principal office of the council.
- (6) A council may amend the policies, practices or procedures established by the council under this section from time to time.
- (7) Nothing in this section prevents a person from making a complaint to the Ombudsman at any time under the *Ombudsman Act 1972*.
- (8) A council must, on an annual basis, initiate and consider a report that relates to—
 - (a) the number of applications for review made under this section; and
 - (b) the kinds of matters to which the applications relate; and
 - (c) the outcome of applications under this section; and
 - (d) such other matters as may be prescribed by the regulations.
- (9) The right of a 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).

PART 3

STAGE ONE AUDIT - SURVEY RESULTS

Part 3 - Stage One Audit - Survey Results

3.1 Stage One - The Audit Survey of all councils

40. In June 2015 I wrote to all 68 councils enclosing the Stage 1 Audit Survey. The letter requested responses to two questions about compliance with the requirements of section 270(1) to (9) of the Act. It also notified councils that I would subsequently conduct a Stage 2 audit with a group of 12 councils as part of an in-depth examination of the practices around internal review of council decisions.

41. The questions were:

1. Has your council a current internal review of council decisions policy/procedure which complies fully with the requirements of section 270 (1) to (9) of the *Local Government Act 1999*, including section 270(2)(ca)? Yes or No?
2. When is the council's internal review of council decisions policy/procedure next due for review? Next review date

42. All 68 councils responded to the survey. 59 of 68 answered in the affirmative, saying their policy/procedure documents were fully compliant with the Act. Two others stated that they were compliant, but on examination, were found to be non-compliant. A total of nine councils, or 13 per cent of the total, fell into this category.

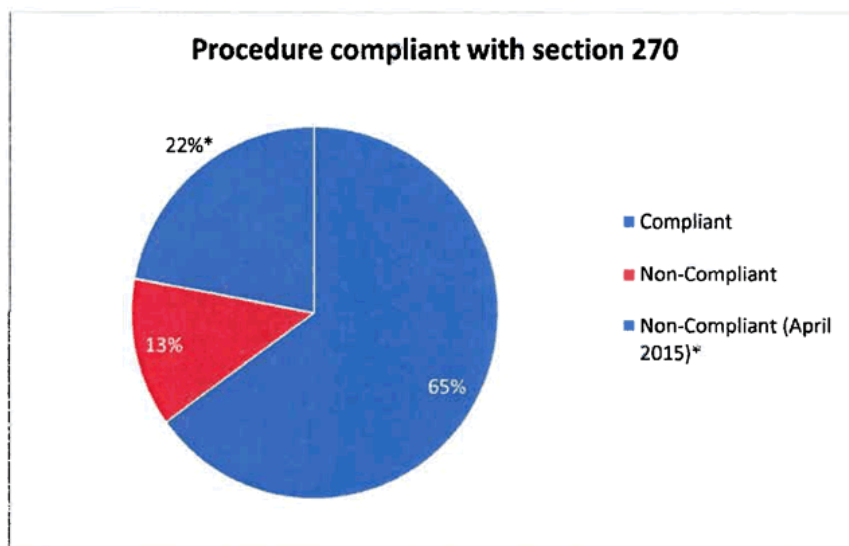


Diagram 1

43. Diagram 1 shows the level of council compliance with section 270(1) to (9) of the Act. The diagram also shows that the number of non-compliant councils has fallen from 15 in April 2015 (22%) to nine in July 2015 (13%). Whilst nine councils is still a serious number, I acknowledge the efforts many councils have recently made to review and update their policy/procedure for internal review of council decision.

44. With regard to question two about the next date of review, many councils responded 'under review currently' - or similar. This was because many councils had exceeded their own nominated date of review - in some cases by years. It appears, again, that my question acted as a prompt for some councils to undertake a review and update their policy/procedure. I welcome this development.

45. Whilst most of the nine councils in the non-compliant category were in breach because they failed to address Section 270(2)(ca), relevant to rates and service charges, there were other examples of omissions and errors in policy which led to non-compliance. Some of these were:
- stating which matters may be referred to the council for consideration rather than stating which matters must be referred to the council as required by section 270(c)
 - no policy information about when and how complainants will be notified about the progress of their application as required by section 270(d)
 - no policy information about the timeframes within which notifications will be made and procedures on a review will be completed as required by section 270(e)
 - advice in a council policy to the effect that the CEO may 'refer the customer to the State Ombudsman'. To the extent that this is suggesting that the council may refuse to deal with an application under section 270 of the Act, and may instead refer the matter to the Ombudsman, then that is inconsistent with the Act.
46. During the course of this audit my Office has referred many councils to the LGASA *Internal Review of a Council Decision: Model Policy and Procedure* document. I note that this document was updated in October 2015. It is available to all councils at <https://www.lga.sa.gov.au/webdata/resources/files>.

3.2 Seven year profile - total numbers of section 270 reviews

47. In order to gather evidence about the extent of use of the internal review of council decision procedures, my Office approached the South Australian Local Government Grants Commission for data on the numbers of section 270 complaints received and resolved by all 68 councils for the seven-year period 2009-2015.¹⁰

Year	Total Complaints Received	Total Complaints Resolved
2009	42	31
2010	60	53
2011	65	61
2012	46	39
2013	62	62
2014	79	71
2015	89	84

Table 1

48. Table 1 and Chart 1 (overleaf) show the numbers gradually doubling from 42 in 2009 to 89 in 2015. Whilst this is still an average of just 1.3 applications per council (up from 0.6 per council in 2009), it is a significant increase over that period of time, and some indication that the procedures are becoming better known in the community.¹¹

¹⁰ The Grants Commission, or SALGGC, analyses a General Information Return from all councils annually that contains a series of questions on council financial and other performance. These are specifically related to the distribution of untied Commonwealth Financial Assistance Grants to local governing authorities in South Australia. One question relates to the number and outcome of section 270 requests for review of decision received by councils.

¹¹ The 'total complaints resolved' column refers to those matters completed at the close of each reporting period. Therefore, some matters have been commenced but not finalised in each of the report years, hence the discrepancy in numbers.

Part 3 - Stage One Audit - Survey Results

49. A notable statistic emerged from the data. It showed that a total of 29 councils had not had a section 270 application for five or more years of the seven year period.

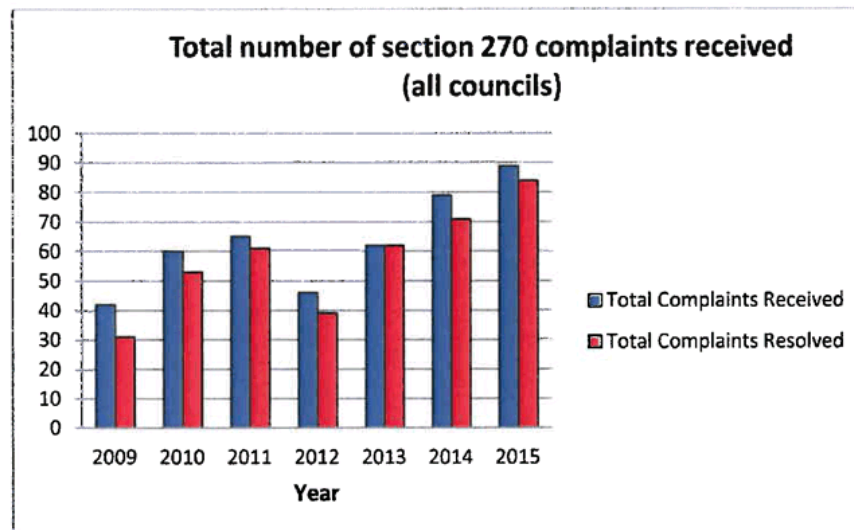


Chart 1

PART 4

STAGE TWO AUDIT - RESPONSES FROM COUNCILS

Part 4 - Stage Two Audit - Responses From Councils

4.1 Council Audit Questionnaire

50. Stage 2 of the audit process commenced with the distribution of a questionnaire to the 12 audit councils. The questionnaire sought answers to ten questions designed to examine a broad range of issues in the internal review process. The following is a summary of the information and analysis of council responses to the seven key questions arising from that research.

4.1.1 Availability of internal review policy/procedure to the public

1. Considering the availability of the council's section 270 internal review policy/procedure to members of the public, do you consider that: *(Please tick as many boxes as are relevant)*

- ☐ The policy/procedure is in a prominent place on the council website
- ☐ The policy/procedure could be more prominently displayed *(please explain)*
- ☐ The policy/procedure is not available on the council website *(please explain)*
- ☐ The council does not promote the internal review policy/procedure as we prefer to resolve matters before a formal review is necessary *(please explain)*

51. The question is directed at the approach taken by councils to ensuring wide accessibility of the review of council decision policy and procedure to the community.
52. The principle involved is that people should be made aware of their right to request review of a council decision and the process that will be followed.
53. Figure 1 shows that eight of the 12 audit councils indicated that their 'Internal Review of a Council Decision' policy was located in a prominent place on the council website and was therefore easily accessible to the public. Four councils conceded that they could do more to make the policy easy to access. One council does not promote the policy because of a preference for informal resolution.

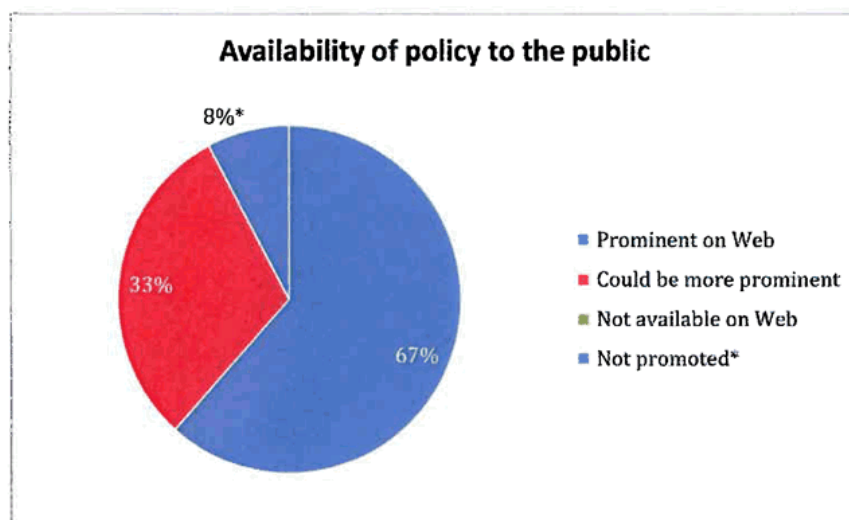


Figure 1

54. Commenting on improved public access, the City of Salisbury noted:

Currently the City of Salisbury's Internal Review of Council Decisions Procedure is accessed on the council's website by searching for 'Internal Review'. Following the review of the Procedures, currently underway, the Procedures will be included on the Policies page to facilitate easier access. The reviewed Policy will also be linked to Council's Customer Compliments, Comments and Complaints Policy.

55. An obvious impediment to access is the name of the document. 'Internal Review of a Council Decision' is not the first search phrase that might occur to a person looking to make a complaint or, more specifically, to challenge a council decision. As noted by the City of Salisbury, some councils are now looking to link their Internal Review policy to the more obvious section that gives information on complaints procedures. Whilst this is useful, it is clear that there is work that councils can do to make their policies and procedures more widely available.
56. A related and equally important issue is the promotion of the policy. Most councils involved in this audit readily admitted that they did not actively promote the internal review policy because they did not want to have to use it. The City of Norwood Payneham & St Peters was an exception. They stated their position as follows:

Whilst we do promote the policy, we always aim to resolve issues without the use of the policy.

57. Many, perhaps more than half, of all 68 councils' internal review policies include wording similar or identical to the following:

The council will attempt to resolve all complaints about council decisions without the need for formal requests for review of those decisions to be lodged.

58. Most council Chief Executive Officers (CEOs) took this position. Many expressed the view to me that, because an internal review of decision was a formal statutory investigative process, it was necessarily time consuming and costly to the council. A minority also felt that the current internal review provisions in the Act allow residents to seek the review of a council decision without the need to establish any *prima facie* flaw in the decision making process. One CEO described this as 'a waste of public money'.
59. I acknowledge the concerns raised by council CEOs, particularly in regard to the resource implications of some internal review processes. I address this issue elsewhere in this report. I also address the related issue of people's right to use the formal internal review process instead of opting for a negotiated or conciliated settlement to their grievance.
60. I accept that councils will most often use every endeavour to avoid the formal review process. That is legitimate if the council is seeking to resolve the matter through informal means - and this approach is acceptable to the complainant. Aside from conducting a formal investigation, there are other options, such as the alternative dispute resolution (ADR) process discussed below.
61. Regardless of the other methods of resolution available, I consider that people should always be made aware that they have a right to the formal internal review process. In my view, councils have a responsibility to promote all mechanisms available under the Act to resolve grievances received from members of the public.

Conclusion

Audited councils all recognise the importance of making their internal review of decisions procedure available to the public. However, most councils do not actively promote the procedure, preferring to steer complainants towards informal or negotiated procedures to resolve grievances. Whilst this is legitimate, I consider that councils should make people aware of their right to a formal review of decision.

Recommendation 1

That all councils highlight a direct link on their website homepage to a plain English description of the procedure available for making an application for internal review of council decision. The procedure could usefully be linked to the council's complaint handling policy information that also outlines steps that can be taken for informal resolution of complaints.

4.1.2 Applications for review which relate to rates or service charges

2. Does your council's current internal review of council decisions policy/procedure include a provision to ensure that applications that relate to rates or service charges can be dealt with promptly? [Section 270(2)(ca)]

- ☐ YES
☐ NO (*please explain*)
☐ No, but currently under review (*please explain how/when*)

62. The question seeks to identify Internal Review of Council Decisions policy compliance with the Local Government Act. In this case, the question addressed section 270(2)(ca) which requires provision to be made in the review procedure for applications relating to the impact of a declaration of rates or service charges.
63. The principle involved is that councils have an obligation to ensure their policies and procedures comply fully with the law.
64. As Figure 2 shows, six of the 12 audit councils indicated that their 'Internal Review of a Council Decision' procedure was not compliant because there was no appropriate reference to applications for review that relate to rates and service charges. At the time of the audit survey, four of the six non-compliant councils stated that they were in the process of reviewing their internal review policy and would rectify the omission.
65. Of greater concern was one council which also omitted information on the manner in which a review may be made [s.270(2)(a)]; made no provision for notification of the progress and outcome of a review application [s.270(2)(d)]; and gave no indication of timeframes within which notifications will be made and procedures on a review will be completed [s.270(2)(e)].
66. I note the former Ombudsman's previous audit findings in his November 2011 report, *Valuing Complaints*, and the clear recommendation he made to ensure full compliance with the requirements of section 270 of the Act. As such, I am concerned to report that six of the 12 audit councils were not fully compliant with the Act at the time of this audit survey. I am further concerned to note that one council from the audit group is in breach on at least four requirements of the statute.

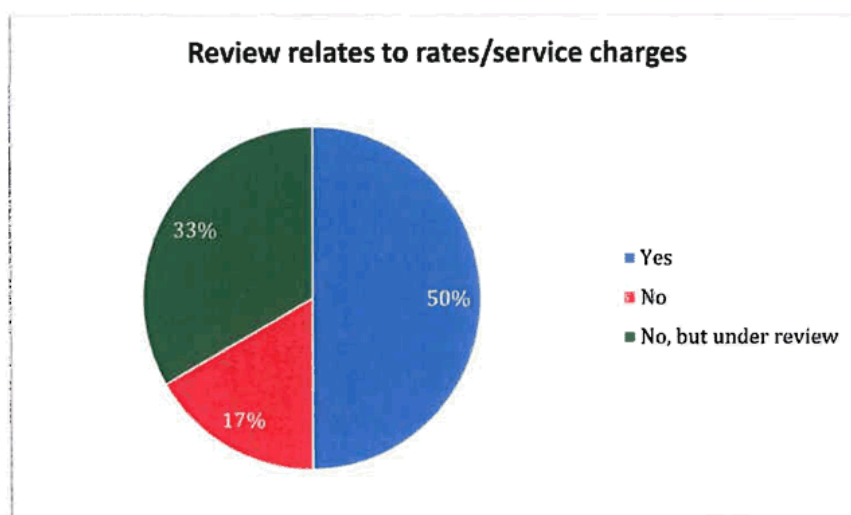


Figure 2

67. One council in the audit group, the City of Charles Sturt, stated that decisions related to rates were considered only under the council's Rate Rebate Policy. Indeed, the council's Internal Review of Council Decisions policy specifically states that 'council will not review decisions of council in respect to the setting of council rates'. I am also aware of other councils, outside the audit group of 12 that have taken this approach to review of rates decisions.
68. In his explanation to me, the CEO of Charles Sturt correctly pointed out that valuation decisions are not within the council's purview and are the responsibility of the Valuer General. He also said that decisions of the council in respect to the setting of council rates (emphasis mine) were not within the remit of the section 270 internal review policy because this is inconsistent with section 151 of the Act. He noted that the community has the ability to have input into the rate setting policy of the council through the Annual Business Plan Consultation process. He submitted that:
- Council would be concerned if applications could be made to review the rates set as this may take some time (in fact the complaint may not be lodged until after the rates are struck, the budget determined and the rates notices sent). As with decisions of council that are clearly set out in the City of Charles Sturt Business Plan and budget council continually allowing these decisions to be reviewed would mean council would not be able to operate.
69. However, whilst it is correct that section 270 does not allow for challenges to the setting of council rates (as per section 151(9) of the Act)¹², it does mandate at 270(2)(ca) a procedure for grievances:
- ...that relate to the impact that any declaration of rates or service charges may have had on ratepayers—the provision to be made to ensure that these applications can be dealt with promptly and, if appropriate, addressed through the provision of relief or concessions under this Act;
70. It may be that there is confusion in some councils between the issue of setting of council rates and grievances that relate to the impact of rates levied on ratepayers.

¹² An exception to this may be if a council does not correctly follow the statutory procedures for setting rates and in so doing exposes its declaration of rates to a challenge that the decision is *ultra vires*.

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These may include issues such as remissions, rate rebates, rate capping and division of land. However, the statute is clear. There must be provision made for grievances about rates and service charges in the council's section 270 internal review procedure. It is not appropriate for these matters to be referenced only in the council's Rate Rebate Policy or similar.

71. Several other councils made mention of their policies related to Debtor Management or to Rates Notices that contain information about 'Objections to Valuations' and 'Objections to Land Use'. One states that complaints regarding rates and service charges usually involve incorrect description of the property or valuation details 'which are managed via administrative procedures'.
72. By contrast, the Adelaide Hills Council accepted and processed an application for review of decision under section 270 in response to a complaint about separate rates for one property and the declaration of the commercial rate. The council reviewed the decision to create separate assessments by the Rates Department, and also the council resolution for the creation of the commercial rate. The outcome was that the original decisions were upheld, citing detailed reasons to the complainant about why the decisions were made and the legislative basis for them.

Conclusion

Despite an earlier Ombudsman SA audit on complaint handling conducted in 2011, half of the 12 audited councils in this survey were still not compliant with the law as it applies to grievances that relate to the impact that any declaration of rates or service charges may have had on ratepayers. All audit councils accept that this omission needs to be remedied.

Recommendation 2

That all councils ensure that their internal review of decisions procedure is fully compliant with the requirements of section 270 of the *Local Government Act 1999*. Further, that all council CEOs confirm in writing to the Ombudsman their full compliance with section 270 of the Act by 31 March 2017.

4.1.3 Time limitations on applications for an internal review of decision

3. The Act does not provide for any time limitation on applications for internal review. However, some councils require applications to be lodged within a certain time period. What do you think should be a reasonable benchmark across the local government sector?
 - ☐ Three months
 - ☐ Six months
 - ☐ Twelve months
 - ☐ Two years
 - ☐ No time limitation
73. The question is directed at identifying an appropriate and reasonable timeline after the council decision is made for terminating access to the review process.
74. The principle involved is that people should have adequate time to be made aware of a council decision that affects their interests and to initiate a formal request for review of that decision if other means of resolution fail.

75. Six of the 12 audit councils indicated that three months was an adequate amount of time before access to the section 270 review process was cut off. One of those councils later revised their position to advocate six months as a more appropriate time limitation on applications. Four councils preferred six months and two other councils preferred one year and two years respectively.

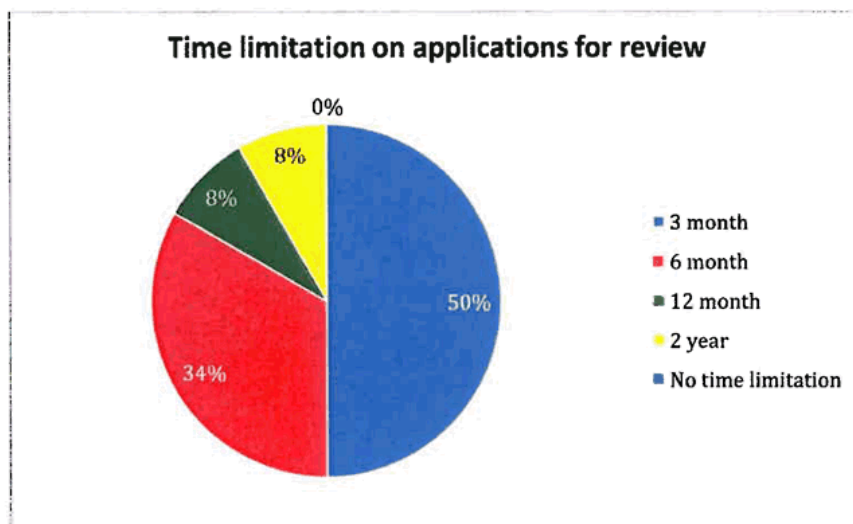


Figure 3

76. There were a range of views expressed on the time limitation issue that perhaps reflect the different approaches to the value and effectiveness of the review mechanism itself. Two councils advocated for the three month time limit to be incorporated into the Local Government Act, arguing that consistency across local government was important and legislation was needed to 'ensure compliance'. The City of Mitcham submitted that:
- A statutory time limit of 3 months is supported to ensure that matters can be challenged quickly and to avoid the s270 process becoming a mechanism that can be misused to excessively delay the implementation of a council or administrative decision.
- Council does, however, believe there should be an 'exceptional circumstances' exemption to any statutory timeframe and would find it useful for guidance on exceptional circumstances to be provided in the legislation.
77. Other perspectives on the issue concentrated on the realities of decision-making and questions of fairness. One council submitted that the 'last point of contact' should be the point when the time limit commences rather than the date of the actual decision. This is because 'the applicant may initially try to have the matter addressed outside of the section 270 process and shouldn't be prejudiced by these actions'.
78. The City of Salisbury revised its policy position upwards from three to six months after an internal review of their public document. Its second submission says:
- [Our] updated 270 Review policy provides for a period of 6 months as an appropriate limitation on applications for internal review. This is in recognition of the time taken to implement decisions, and also the likelihood that members of our

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community are not necessarily well versed in terms of processes available to them to question a decision that affects them.

By allowing 6 months, there should be sufficient time for individuals to make contact with the council to express concerns about an issue, and then be provided with information about options available to them. Our focus remains on resolving issues of concern with members of our community and providing them with fair and equitable access.

79. My own legislation has a 12 month time limit within which complaints may be made to my Office. The period commences 'from the day on which the complainant first had notice of the matters alleged...' Importantly, I have a discretionary power available to assess a matter and accept the complaint outside that time limit if, 'in the all the circumstances of the case, it is proper to entertain the complaint'.¹³ I am aware of at least one council that has received requests for section 270 reviews for matters that go back more than five years. These are invariably resource intensive, and I see little advantage in any requirement allowing such old matters to be reviewed in a local government context.
80. On the other hand, I see merit in the arguments for consistency across the sector. There is also a case for discretion to be exercised by individual councils in accepting matters for review that are outside the standard time limit. I do not, however, consider that it is necessary to legislate or regulate the time within which applications for review may be made.
81. Rather, I propose that all councils include a six month time limit for accepting applications in the next update of their Internal Review of a Council Decision: Policy and Procedure. The wording of the time limit clause should also include a reference to an appropriate discretion to be exercised by the council or it's CEO in cases where the time limit may have been exceeded. On reflection, and in view of submissions made in response to my provisional report, I do not consider it necessary to recommend that the last point of contact be taken as the point of determination for review. This is appropriately covered by the time limit discretion.

Conclusion

Council section 270 procedures allow for varying or no time limits for acceptance of applications for internal review of decisions. The Act is silent on the issue and there is no fetter on applying a time limit. There is an argument for consistency in approach across all councils. Most councils consider that a period of six months or more is appropriate. Councils are mindful that section 270 reviews may be resource intensive and are reluctant to consider older matters when no application was received at or near the time of decision.

Recommendation 3

That all councils include a reference to a six month time limit for accepting internal review of council decision applications in a revised version of their internal review of decisions procedure. Consideration should also be given to the exercise of a discretion by councils to allow a longer time limit to apply in particular cases.

¹³ *Ombudsman Act 1972*, Section 16 - Time within which complaints may be made.

4.1.4 Decisions to which the internal review process can apply/cannot apply

4. Subject to a bona fide application, would your council conduct a section 270 internal review of decision for any of the following: (Please tick as many boxes as are relevant)
- ☐ A complaint where there is no appeal right (e.g. non-complying development)
 - ☐ Where the complaint relates to how the council has handled alleged breaches of the Development Act (e.g. decisions about whether to take enforcement action)
 - ☐ Where the complaint relates to how the development was categorised (and there is no review right available under section 86(1)(f))
 - ☐ Where the matter relates to conduct of a delegate but doesn't fall within the Minister's Code in the Development Act
 - ☐ A complaint relating to an expiable offence
 - ☐ None of the above

82. The question is directed at identifying council policies and practices when considering applications for internal review of decision where another appeal mechanism may not be available.
83. The principle involved is that people should be able to access an appropriate avenue for review if their grievance is the result of a council decision. As such, a *bona fide* application for review should not be frustrated by apparent gaps in legislative review provisions.
84. Two of the 12 audit councils indicated that they would conduct a section 270 internal review of decision on all the five example decisions proposed. A third council accepted all the Development Act related decisions for review, but rejected the expiation offence example. Another three councils indicated that they would not conduct a review on any of the examples proposed. Six councils accepted some of the examples given as grounds for conducting a section 270 review of decision.

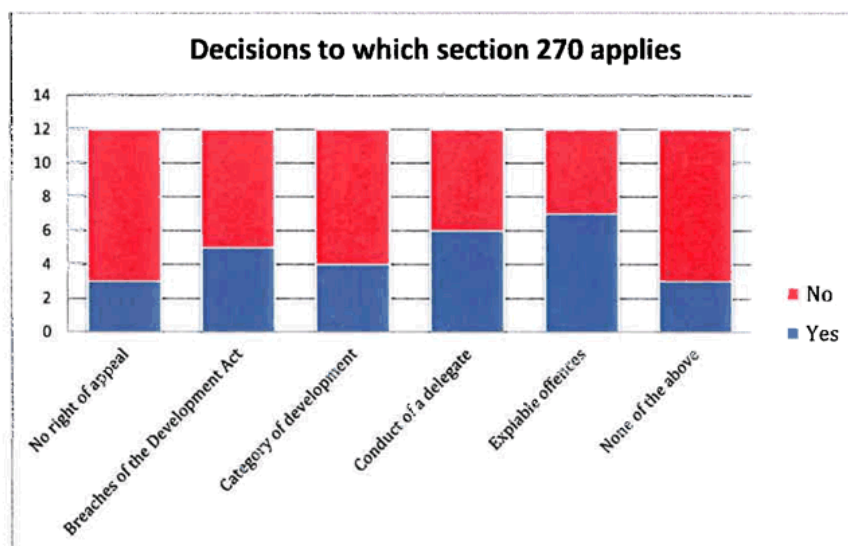


Figure 4

85. Whilst applications for a review of decision about development related issues represent less than 20% of the sample cases identified by the 12 councils, the range of views expressed on the scope of the policy were wide and varied.¹⁴ Roxby Council explained its approach to development matters as follows:

As the Development Act contains detailed, specific appeal and review mechanisms, it is considered appropriate, as a 'general principle' that applicants make use of the statutory scheme specifically set up to deal with complaints regarding decisions surrounding development applications.

However, that is not to say that the council refuses to conduct section 270 reviews of matters determined pursuant to the Development Act itself. As recently as August 2015, the council undertook a section 270 review at the request of an applicant who had submitted a development application for a non-complying proposal that had been refused development plan consent. The applicant had no appeal rights.

86. The central issue inherent in the question is whether a council can limit the types of matters/decisions that could be subject to the section 270 internal review processes. Section 270(4) of the Act proscribes the limitations on the types of decisions that may be subject to review. It states:

A council, or a person assigned to consider the application, may refuse to consider an application for review if—

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

87. On my reading of the provision, the Act does not enable councils to limit the types of matters it is prepared to accept for review of decision under section 270 unless it falls into category (a), (b) or (c), above.

88. However, the real difficulty in interpretation of the statute is highlighted by the exclusions that some councils have identified and promoted. These specify 'Matters outside the scope of the policy and procedures'. Some councils, among them the City of Mitcham, state that a 'section 270 review is not applicable with regard to development matters under the Development Act 1993'. The council made a submission to me as follows:

In broad terms, State legislation and regulations, (including the Development Act) provide a range of appeal processes. It is felt that where these appeal processes are provided for in the legislation and/or regulation, the parliament has had the opportunity to determine what appeal rights should be provided. We therefore feel that a complainant should not be able to [access] a general provision within the Local Government Act (s270) to have unlimited appeal rights on matters that relate to other legislation...

There is also a jurisdictional issue in our view - i.e. matters being assessed under the Development Act should only be reviewed under provisions within that Act, not carry over into reviews available under provisions within the Local Government Act. By allowing section 270 reviews of matters, the powers of the Development Act are undermined.

¹⁴ For the financial year 2013-2014 the 12 councils identified four development related matters from a total of 21 internal review applications across their jurisdictions in that year.

89. Although I understand that there is confusion in local government about how some statutory appeals processes apply to decisions of the council, there is no basis in law for asserting that review rights must be embodied only within an Act that generally applies to that area of governance. As the Minister told the Parliament when the new Local Government Bill was introduced in 1999: 'there is no intention that the provision should impede in any way the right of citizens to approach other sources of remedy for illegal actions on the part of councils...'
90. In my view, a reasonable interpretation of this is that section 270 was designed to provide an avenue of review for grievances that do not fit into any other legislative or regulatory framework relevant to the operation of local government.
91. The LGASA Model Policy¹⁵ correctly cites other provisions in the Local Government Act (such as objections to land valuations) where prescribed appeal arrangements exist and should be used. Similarly other legislation, including the *Development Act 1993* and the *Environment Protection Act 1993*, include their own proscribed appeal procedures that should be used. Despite that, it is not uncommon to find council internal review procedures citing a list of prohibited matters that the council will not consider reviewing under the section 270 provisions. Usually these identify particular legislation or an area that council considers is covered elsewhere, such as Code of Conduct matters.
92. As noted, some councils consider that development or planning matters, for example, should only be reviewable under that legislative umbrella. No right of review should be available under section 270 of the Local Government Act. However, the main problem my audit identified is the interpretation that many councils give to the prescribed appeal procedures under the Development Act.
93. A common view seems to be that if the grievance is a development or planning matter, an appeal under that Act is the only source of redress for the complainant. This is the interpretation of council internal review policies that is sometimes given to inquiring members of the public. My Office has frequently had cause to review this advice. In some cases we have referred the matter back to the council for reconsideration as a section 270 matter; and the review has been conducted.
94. As the varying responses from the 12 audit councils show, there is a wide spectrum of approaches to the question of exclusions. Using the development example, some councils have accepted, or will accept, a request to review a development application for a non-complying proposal that had been refused development plan consent. In the case cited above by Roxby Council, the applicant had no appeal rights.
95. On the other hand, there are councils that consider any development related matter is outside the parameters of the section 270 provisions. Given the 'grey' area that this issue highlights, it is not surprising that a number of councils were cautious in answering the question. The Port Pirie Regional council put its position this way:

While council would review each applicant on its merit, the Development Act is generally quite clear on appeal rights available to all parties.
96. In my view, there is a need for consistency across local government in South Australia on matters which fall outside the scope of the review process. It is unsatisfactory and inconsistent with the intent of the legislation for there to be situations where a review is allowed in one council area, but the same, or a similar review, disallowed in a neighbouring jurisdiction. Such inconsistencies are rightly

¹⁵ *Internal Review of a Council Decision: Model Policy and Procedure* - LGASA, October 2015.

seen as unjust and may well erode confidence in the integrity and professionalism of local government.

97. On the question of review applications relating to expiation of offences, there was more consistent support - by seven of the 12 audit councils. For those not inclined to accept an application for review in this category, a common explanation was that there is 'no legislative intent' for an appeal to be available. Roxby Council took a more inclusive view:

With respect to expiable offences however, the decision to issue an infringement such as a parking fine is usually taken at officer level without the considered period of external review. Whilst these issues are usually black and white there may be a case of extenuating circumstances that would warrant a review and potential withdrawal of the infringement. For instance, a Doctor's car parking in a no parking zone whilst attending an emergency might warrant an infringement but a review on practical grounds.

98. Roxby Council was entirely correct in its example of 'extenuating circumstances' that would likely warrant the offence being deemed 'trifling' and potentially subject to review under section 270 of the Act. The relevant legislation in this case is the *Expiation of Offences Act 1996*, specifically sections 4(2), 6(1)(ha) and 8A(1). Section 8A(1) provides that a person who has been given an expiation notice may apply for a review of the notice on the ground that the offence is trifling.¹⁶ There may be other circumstances that warrant consideration for internal review. An example might be where the council is challenged about confusing speed sign changes and agrees that there may be a case to consider waiving fine notices.
99. In summary, I consider that all councils should be open to accepting an application for internal review of decision in matters where there is evidence that no right of appeal exists under any other Act. That said, an internal review under section 270 should not be used where there are statutory appeal rights available, e.g. in a development approval matter, because only a court can overturn a decision on the granting or refusal of a development application. In so saying, I note the new provisions for rights of review and appeal at section 202 of the *Planning, Development and Infrastructure Act 2016*. When the Regulations are finalised, the new Act will eventually replace and initiate the repeal of the *Development Act 1993*.
100. I have taken note of the concerns raised by councils about the potential for process duplication and for the public to be confused if the internal review procedure were to allow for a discretion when a statutory appeal is also available for the decision. Instead, I have accepted the suggestion that councils consider approaching the LGASA to include the commitment to a fully inclusive review remit in the *LGASA Internal Review of a Council Decision Model Policy and Procedure*.

Conclusion

There is a wide range of policy positions determined by councils in South Australia on appeal and review arrangements in the areas of planning, development and expiation of offences. Some councils wrongly decline to consider a section 270 application for review in these categories on the basis that the area is covered, or should be covered, by the provisions of legislation outside the Local Government Act, e.g. the Development Act.

Recommendation 4

¹⁶ The Supreme Court of South Australia considered 'trifling' in the case of *Roberts v Police* [2013] SASC 190. A relevant finding at [17] was that 'a deliberate breach will rarely be described as trifling save in cases where humanitarian considerations or considerations of urgency arise'.

That all councils revise the part of their internal review of decision procedure that deals with 'Matters outside the scope of the policy and procedures' to explicitly state that matters that fall outside statutory appeals procedures will be considered for the conduct of a section 270 review on the merits of the individual application. Further, that councils discuss with the LGASA the desirability of including this commitment in the LGASA *Internal Review of a Council Decision Model Policy and Procedure*.

4.1.5 Independent conduct of an internal review of decision

5. The issue of separating the original decision-maker from the internal review decision-making process has been raised with the Ombudsman. In general terms, who is best placed to conduct an internal review of decision for the council? (Please tick as many boxes as are relevant)

- ☐ The CEO
- ☐ The original decision-maker
- ☐ A senior officer of the council not part of the original decision
- ☐ Lawyers engaged by the council
- ☐ The Local Government Governance Panel
- ☐ A neighbouring council CEO or senior manager
- ☐ An independent person with a knowledge of local government governance issues but not currently serving

101. The question is directed at identifying council policies and practices when deciding how to conduct an internal review of decision in circumstances where conflicts of interest arise with the original decision-maker.
102. The principle involved is that no-one involved in making the original decision should conduct the internal review; and that a senior person not associated with the original decision should conduct the internal review to ensure that grievances are assessed and adjudicated transparently and impartially.

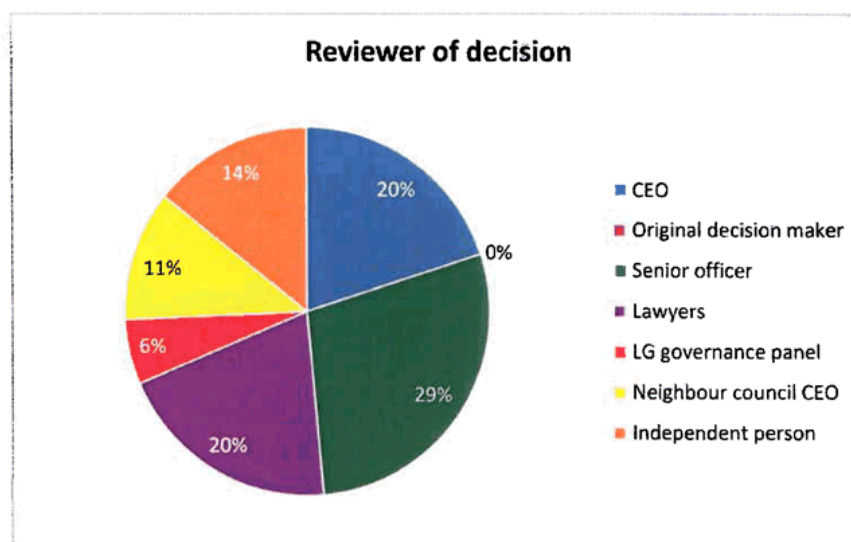


Figure 5

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103. The LGASA provides guidance on this issue in the form of advice on assignment of applications for review in its Model Policy document. Many councils have chosen to incorporate this passage in their Internal Review Procedure. It says, at clause 6.1:

Wherever possible and appropriate, council will seek to involve an external person or panel to assist with the review, including the enlistment of employees of other councils.

[Optional: council has established a panel of external experts and experienced reviewers from which it is able to draw for this purpose.]

104. Notwithstanding the range of choices made in the survey, not all councils were in agreement with the principle that the original decision-maker should be separated from the internal review process. One Chief Executive stated openly that he would be prepared to review his own decision. He told me that he would 'look at it myself and see if I'd change my mind'. He went on to suggest that seeking independent assistance in a review of decision from a neighbouring council would not be accepted in his community because, 'people wouldn't trust another council...it would be seen as boys looking after boys'. Three councils in the audit group also conceded that they had used the original decision-maker to conduct section 270 internal reviews.

105. The interviews I conducted with councils did, however, reveal a broad consensus on the question of decision-maker conflict of interest. Most CEO's readily agreed that an internal review of decision should be conducted at arm's length from the original decision-maker - regardless of the fact that that person was often the CEO. As the figures show, the largest number opted simply for a senior manager in the administration to conduct the review. In many instances the key consideration appears to be a selection based on management experience and the most effective way to bring the review matter to a close. The Town of Gawler identified its approach as follows:

The Governance team have not had a lot of experience in investigating section 270 reviews and have used Executive management and lawyers to assist. Neighbouring councils have offered their experience if required but this offer has not been taken up to date.

An independent panel would be a useful avenue if a complaint is about an executive officer or no experienced council officer is available to investigate a complaint. We are aware of the LG Governance Panel but have not had to contact them to date.

106. Some councils thought that matters which relate to a decision of the CEO are best handled by an independent reviewing officer. In most cases, this has meant engaging lawyers to conduct the review, although there were a number of instances cited where councils have engaged neighbouring council senior officers or retired public servants to conduct the review. Despite general agreement that external reviewers are a desirable option, there were some strong views expressed against any regulatory requirement to use external reviewers or a panel of experts.

107. Some smaller councils, including the District Council of Yankalilla, expressed the opinion that an independent panel of experts was worth considering:

It would be a good resource, enabling referrals to an external body. It would allow for independent review of the complaint. [It] would free up resources within our small council.

It is not essential for panel members to have a local government background. Any person with suitable investigation experience/mix of suitable skills could do it. Sometimes it would be useful to use non-local government reviewers because it can be hard to find people in smaller communities to conduct reviews who are not involved with the council members or the CEO in some way.

The District Council of Robe had a broadly similar view and a suggestion about resource sharing:

An independent panel would be worthwhile except the costs incurred would be substantial. A neighbouring council would do the investigation for 1/10th the cost. Maybe a regional panel could be established as part of the LGA regions. This would reduce costs.

108. Implicit in the discussion about the independence of reviewers is the associated issue of the relevant expertise to conduct the review. As stated above, some councils have suggested drawing on the expertise of people outside of local government, particularly people with investigation and alternative dispute resolution (ADR) skills.¹⁷
109. With an externally facilitated ADR process, for example, it is sometimes possible to resolve protracted and difficult disputes through the auspices of an independent third party, usually a professional mediator. It is also worth noting, as many councils have demonstrated to me, that they already use mediation and conciliation techniques to resolve disputes at the secondary level of complaint handling.
110. Whilst there are excellent resources available to councils to develop in-house investigation skills, there would appear to be a case for more training and development across the sector in this area.¹⁸ Some councils will continue to prefer the services of lawyers to conduct formal investigations. However, as the LGASA has demonstrated with the Local Government Governance Panel, there is also an option of a sector driven process or body to provide external review services and support.

Conclusion

Many South Australian councils have developed internal review practices that seek to manage situations where an original decision-maker (often the CEO) may have a conflict of interest. Whilst internal senior delegation of responsibility is a preferred option, many councils are willing to involve independent reviewers where possible and when available.

Recommendation 5

That all councils, through the auspices of regional Local Government Associations, consider and report to the Ombudsman by 31 March 2017 on the option of developing regional panels of independent reviewers who can assist councils with complex review matters.

¹⁷ ADR is also known as 'external dispute resolution'.

¹⁸ See The Australian/New Zealand Standard *Guidelines for complaint management in organisations* and the *Better Practice Guide to Complaint Handling* endorsed by Australian Parliamentary Ombudsman.

4.1.6 Matter types and learning outcomes from internal review of decision

6. In your return to the Local Government Grants Commission for 2013-14 council reported numbers of complaints received under the 'Internal Review of Council Decision Procedures'. If you received complaints, please attach a brief summary of all complaints under the following headings:
- Nature of complaint
 - Identity of Reviewer
 - Review process
 - Giving reasons for the decision
 - Resolution
 - ☐ No s.270 internal review complaints received

111. The question aims to identify the frequency of section 270 internal review applications to audited councils and the types of matters people sought to have resolved through this mechanism.
112. The principle involved is that people have a right to request a formal internal review of council decision and the legislation intends a wide variety of matters will be eligible for review.
113. Figure 6 shows one of the 12 audit councils reported a single section 270 application in the year 2013-2014; four councils reported two applications each and three councils reported four applications each.¹⁹
114. As detailed in Table 1, the number of reviews across the local government sector has been increasing steadily over the last seven-year period. In 2009 the number of review applications received across all councils was just 42. In 2015 the sector reported over twice as many - with 89 recorded by the Local Government Grants Commission. It is interesting to note that there also seems to be a contrast between several larger metropolitan councils, where section 270 review application numbers are highest - and a cluster of smaller regional councils where application numbers are low, or non-existent.
115. It is reasonable to observe that the increased numbers of review applications are a reflection of a variety of factors. These include better promotion of the review policy/procedure by some councils; more internal review referrals from my Office; and a greater willingness and confidence by councils to use the review mechanism where informal resolution has failed. The nature of the council's business and community engagement profile are also likely to be factors.

¹⁹ As reported by councils, not all section 270 applications proceeded to a formal review. Some matters were resolved by negotiation, others were rejected on various grounds, including referral to another appeal process. Interestingly, at least one of the section 270 matters reported was the result of an instruction from the council CEO that a section 270 review of decision was to be conducted after receiving a verbal complaint from a resident.

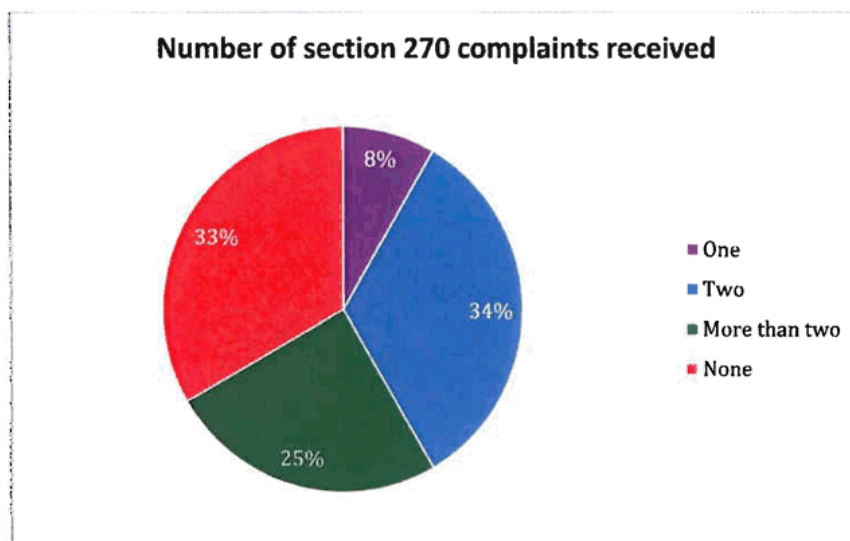


Figure 6

116. The 12 audit councils reported the following types of review matters to me in case studies submitted in response to question 6:
- decision regarding development-related matters by Planning staff
 - decision to decline request for rate capping
 - decision to decline application for removal of a street tree²⁰
 - decision to locate a Telstra tower
 - decision not to remove vagrants from a council reserve
 - decision to remove a regulated tree from a council park
 - decision not to undertake a Traffic Impact Statement
 - decision to enforce a by-law
 - decision to levy a separate rate for a commercial property
 - decisions and council action re investigation of a dog complaint
 - decision to remove signage from a public place
 - decision not to publicly advertise a council position
 - decision re sale of council assets
 - decision to dispose of steel sections
 - decision not to waive a marquee hire fee
 - decision not to offer a promotion package for a community event
 - decision re Code of Conduct review.
117. Question 7 in the survey questionnaire asked councils for an indication of the remedies they had applied after a section 270 internal review had been completed. In many instances, councils reported that the outcome was to provide an explanation to the complainant because, after review, the original decision had been upheld. Two councils offered complainants an apology for mistakes made by council staff; there were numerous reports of internal reviews leading to a review of particular council policies and/or procedures and training for staff. There was also a report that a debt had been waived and, another, that a staff member had been disciplined for an error.

²⁰ This matter was reported as an example of a section 270 application received but rejected on the grounds that there had never been a request to the council to remove the tree and therefore there was no council decision against which to lodge a complaint. Further discussion and negotiation with the complainant resulted in the tree subsequently being removed to the satisfaction of the complainant.

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118. Audit councils were also asked about administrative improvement and learning outcomes from internal reviews. The CEO of the District Council of Loxton-Waikerie reflected on the outcomes of two reviews that were conducted by senior managers of the council:

In [the first] instance the primary lesson learnt was the Section 41 committee members were not as aware of the nature and limitations of the role of the committee as they could have been, i.e. the committee had committed to waive a fee that they did not have the delegated authority to do so.

Council developed training for all section 41 committee chair persons and members in an attempt to ensure that all were much better informed of the role of a section 41 committee, i.e. in making a recommendation to council.

In the second example the waiver of the fee was also determined not to be warranted and the offer of free tickets [in exchange] was not deemed appropriate.

In both instances I am confident that an independent review would have reached the same conclusion, given the nature of the decisions that were taken, and the scope of the investigations.

In each circumstance, internal review has been viewed as a valuable opportunity to review and improve policy, procedure and practice.

119. Commenting on the outcomes of two reviews undertaken - one about a council officer decision in relation to the enforcement of a by-law; the other a complaint about separate rates for one property and the declaration of the commercial rate, the CEO of Adelaide Hills Council noted:

The process generally worked well. Given scant resources meeting specified timeframes was very difficult, especially where the investigation was complex - the timeframe was too optimistic. Undertaking both the contact officer role and the investigator role was difficult. Consideration could be given to ensuring the two roles are separated.

Of the two reviews not completed by the end of the 2014-2015 financial year one is now resolved. The review had been completed but the matter had been left open until a policy was reviewed. However, in retrospect, it would have been more appropriate to close the review once the determination was finalised, with a recommendation that the specified policy be reviewed.

120. The CEO of the Town of Gawler commented:

We are happy with the reviews conducted in regards to removal of signage and the recruitment process. Both instances were investigated by the Governance Department and found that officers had acted in line with the policies and procedures of the Town of Gawler. Lawyers also gave an opinion during these investigations.

121. The CEO of the City of Charles Sturt told me at interview:

In terms of lessons learnt, it is important to have a reviewer who fully understands the issues and to maintain communication between parties and stakeholders. It is also important to follow up [internally] after the determination.

Conclusion

The statistics from the Local Government Grants Commission show that section 270 applications received by councils have doubled in the past seven years. Whilst the numbers are still low, and concentrated largely in metropolitan councils, there is some evidence that councils are willing to use the internal review mechanism more now than in the past. Councils have shown an ability to analyse review outcomes to inform better administrative practice.

Recommendation 6

That all councils periodically evaluate their section 270 review investigations and document learning outcomes relevant to their administrative practices and functional responsibilities. That, as appropriate, these learning outcomes are shared with the Local Government Governance and Policy Officers Network (GPON) and relevant local government interests.

4.1.7 The effectiveness of the legislation requiring internal review of council decisions

7. Section 270 of the Act was recently amended to incorporate new requirements, including a policy covering complaints about the services and actions of the council. Do you consider the current section 270 legislation is working effectively?

- ☐ YES
☐ NO, it needs amendment (*please explain*)
☐ The current section 270 should be scrapped and replaced with (*please explain*)

122. The question is directed at identifying council views on the suite of legislative requirements in the current Local Government Act that provide for complaint handling and internal review of council decisions.

123. The principle involved is that the legislation must be followed by councils, but acknowledges that complaint handling expectations from the community are changing and that the legislation should be amended in practical ways.

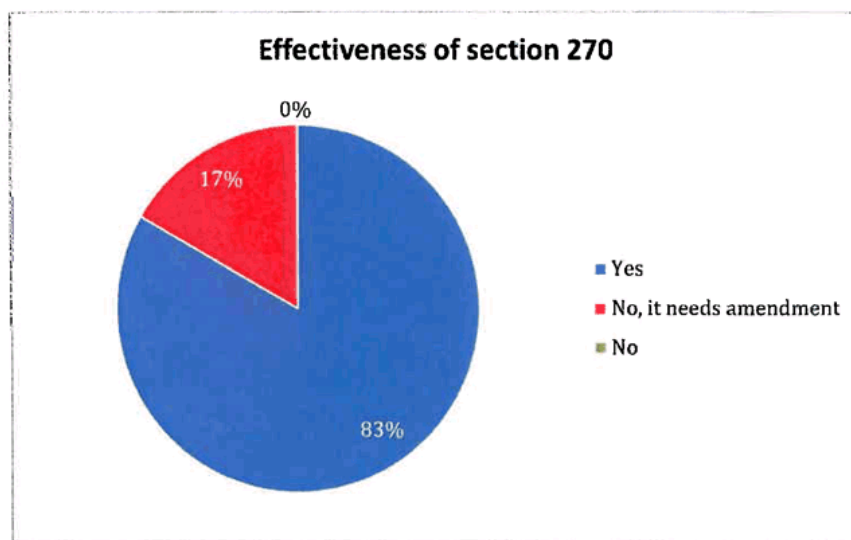


Figure 7

Part 4 - Stage Two Audit - Responses From Councils

124. Figure 7 shows that 10 of the 12 audit councils are satisfied that the legislation is working as intended and does not need amendment. Two councils submitted that the legislation needed amendment on the grounds that it allows review of merit as well as process, and they consider it should not. I examine these views at greater length in the next section.
125. No council put forward a submission that the legislative requirement for review of decision should be scrapped. In other words, it is reasonable to conclude that the right of the public to challenge a decision of a council is overwhelmingly accepted by the local government sector. The Adelaide Hills Council commented that:
- The requirements of s270 are reasonable and appropriate to ensure accountability and transparency.
126. Amendments to the Local Government Act that came into effect on 10 December 2011, included a new requirement for councils to develop and implement complaint handling and request for services policies. These requirements were simply added to the original section 270 with a commensurate minor amendment to section 270(1). They read as follows:
- (a1) A council must develop and maintain policies, practices and procedures for dealing with—
 - (a) any reasonable request for the provision of a service by the council or for the improvement of a service provided by the council; and
 - (b) complaints about the actions of the council, employees of the council, or other persons acting on behalf of the council.
 - (a2) The policies, practices and procedures required under subsection (a1) must be directed towards—
 - (a) dealing with the relevant requests or complaints in a timely, effective and fair way; and
 - (b) using information gained from the council's community to improve its services and operations.
 - (1) Without limiting subsections (a1) and (a2), a council must establish procedures for the review of decisions of—
 - (a) the council;
 - (b) employees of the council;
 - (c) other persons acting on behalf of the council.
127. It is apparent from the audit evidence that the effect of the amendments has been to cause some confusion in councils and, it is reasonable to assume, in the community as well. The problem, it seems, is that most councils have complied with the legislation by introducing a complaint handling policy and procedure to comply with (a1) and (a2) in addition, and separate to, the existing internal review procedure already required by section 270(1).
128. The confusion arises with the reference often made by councils to 'section 270', which of course now also provides for generic complaint handling processes and procedures. Those procedures usually include an internal review of decision element as the 'third step' in the complaint handling process. The result is that almost all councils now list their complaint handling policy and procedure on their website [usually alphabetically under 'c'] - and, in a separate location under [i], most list the 'Internal Review of a Council Decisions Procedure'. The practical effect of having two documents under different headings is to distance the internal review procedure from the council's complaint handling policy.

129. A few councils have decided to overcome the separation by simply including the internal review of council decision procedure in the complaint handling documents. That seems reasonable, given that the statute titles section 270 as: 'Procedures for review of decisions and requests for services'. Nevertheless, most councils have not done this, and keep the two processes as separate policy and procedure documents.
130. It may be that most councils prefer to keep the instruments separate, because they do not want complainants to escalate their grievance to an internal review. As stated above, all councils place strong emphasis on early resolution and a preference to resolve matters 'promptly at the initial point of contact and at the appropriate officer level'.
131. Interestingly, all but two of the 12 audit councils agreed that people have a right to request a formal internal review of decision if they are not satisfied by an informal officer-level review or a negotiated settlement. The CEO of the Town of Gawler put it succinctly:

If the person wishes to go directly to an internal review, that option is available to them.

Conclusion

The evidence from the audited councils shows that there is a potential for the public to be confused by the separation of complaint handling and internal review policy and procedure documents. A large majority of councils believe the legislation is working as it stands and most agree that people have a right to review of decision without participating in informal resolution processes.

PART 5

GOVERNANCE STANDARDS AND ADMINISTRATIVE LAW

5.1.1 A universal review procedure across local government?

132. One of the issues raised during the course of the audit was the question of a consistent or universal standard for internal review of decision procedures across councils.
133. Asked if the LGASA Model Policy and Procedure for internal reviews should be universally adopted as a standard across the local government sector, councils generally responded in the affirmative. Five councils gave an unqualified yes, another five said yes, but with variations included in the document to reflect local factors. The District Council of Loxton Waikerie was unequivocal in support of a universal standard:

Members of the public should be able to expect comparable process of review [across all councils].

134. Another council CEO agreed that the LGASA Model Policy was a useful source document to the extent that it covered all matters involved with section 270 reviews. However, he informed me that his council did not prefer it because 'the model policy is hard to read and follow as there is no logical sequence with policy and procedure being scattered throughout the document'.
135. The City of Charles Sturt was one of the two councils that responded in the negative on the question of a universal standard across local government. Whilst being clear that they did not favour a universal standard, the CEO did voice his agreement with the concept of consistency:

Given all councils have very different scale and structures a universal standard may not be appropriate. Councils as individual entities should be able to have the ability to develop and implement relevant policies and procedures. However, having model policies is a good way of supporting consistency.

136. Some councils indicated that a revised model policy could usefully clarify the application of the 'sufficient interest' test in the legislation. Section 270(4)(c) reads:

- (4) A council, or a person assigned to consider the application, may refuse to consider an application for review if-
- (c) the applicant does not have sufficient interest in the matter

137. Many councils commented that refusal of an application for internal review was not done without full consideration of the issues raised. In general terms, they deemed applicants to have 'sufficient interest' in a matter if they are personally affected by the decision in question. Whilst one commented that 4(c) was a useful 'filter' test for applicants, the council also emphasised that each matter should be, and would be, considered on its merits.
138. My Office has done some research on the issue of the application of the sufficient interest test at law. In summary, the question of 'standing' in administrative review is closely linked with the doctrine of procedural fairness and a complainant's right to be heard (the hearing rule). There is some relevant case law that consistently supports the principle that an applicant must establish that they have an interest in the subject matter, over and

above that of the general public. It is acknowledged that this is not an unduly high test, and that decisions relating to standing must be determined on the facts and circumstances of individual cases.²¹

139. The Ombudsman Act has a similar provision at section 15(3)(a) which provides that, subject to some exceptions, a complaint must not be entertained by the Ombudsman unless made by a person or body of persons directly affected by the administrative act to which the complaint relates. This standing test is consistent with, or perhaps a higher test threshold than the provisions contained in section 270(4)(c). It may be that some guidance on an appropriate application of the sufficient interest test would be a useful addition to the LGASA Model Policy.
140. Consistent with the recommendation that I have made above in section 4.1.4, I consider that it would also be appropriate for councils to discuss with the LGASA the desirability of revising its Model Policy at 2.2: 'Matters outside the scope of the policy and procedures'. Such a discussion would aim to encourage consistency across the sector. Current wording is unclear about what happens to applications that fall outside prescribed appeal procedures. The revision could clearly state that grievance matters that fall outside statutory appeals procedures will be considered for the conduct of a section 270 review of decision on the merits of the individual application.

5.1.2 A process review of decision only?

141. As reported at 4.1.7, two councils made detailed submissions proposing amendments to the Local Government Act to disallow applications that seek to challenge the merits of a council decision. Both councils consider that only reviews of the process of decision-making should be allowed under section 270.
142. The Commonwealth Administrative Review Council has articulated the most commonly accepted discussion of the characteristics of a merits review - and contrasted it with the more limited focus of a process (or judicial) review. It says:

Merits review is the 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'. In a merits review, the whole decision is made again on the facts. This is different to judicial review, where only the legality of the decision making process is considered. Judicial review usually consists only of a review of the procedures followed in making the decision.

The objective of merits review is to ensure administrative decisions are correct or preferable - that is, they are made according to law, or if there is a range of decisions that are correct in law, the best on the relevant facts. It is directed to ensuring fair treatment of all persons affected by a decision, and improving the quality and consistency of primary decision making.²²

143. In his 2011 audit of complaint handling in local government, my predecessor came across at least one example of a council that explicitly disallowed a

²¹ For example, the commentary of White J in *Clothier and Simper v City of Mitcham* (1981) 45 LGRA 179 at 186.
²² Administrative Review Council, *What decisions should be subject to merits review?* (1999). Cited in the *Australian Administrative Law Policy Guide* © Commonwealth of Australia 2011, p.12. *Note:* The Australian Government announced on 11 May 2015 that it had decided to discontinue the Administrative Review Council as a separate advisory body, and to consolidate its functions into the Attorney General's Department.

merit review in its section 270 procedure document. He suggested that the council modify its procedures document, commenting:

This is a wrong interpretation of the statute. I can find no impediment to reviewing the merits of a decision in the legislation. Further, as a matter of good governance, complainants are entitled to a review of all aspects of a decision, including merit, under section 270 of the Local Government Act.²³

144. The issue of whether section 270 provides for both process and merits review arose in an investigation conducted recently by my Office, which concerned a council's decision to remove a tree.²⁴ The complainants in that matter sought internal review of the decision under section 270. The council's review noted:

This report will not deal with [this part of] the Applicant's complaints, as it is not the role of procedures under Section 270 of the Act to discuss or determine on the merits of opposing arguments. Rather, the purpose is to ensure decisions were made reasonably, fairly, and followed appropriate processes. As such, this review will only deal with procedural matters relating to the decision itself.

The council later advised me that:

The council did consider the merits of the decision in relation to the decision making processes and whether the views of different parties had been appropriately considered.

145. This submission indicated the apparent confusion surrounding the distinction between a review of the decision-making process (a process review) and a merits review. Review of the decision-making process and whether the views of different parties were appropriately considered is a separate matter to the conduct of a merits review, which requires the fresh consideration of all relevant information, including the original circumstances and arguments. The council advised that it did not do this, and in my view, section 270 necessitates such a consideration. I therefore found that the council had erred by its failure to consider the merits of the decision in the section 270 review.
146. On this basis, I recommended that the council:
- review its Complaint Operating Guideline (including section 270 internal review of council decisions or grievances) to clearly outline how the council undertake its section 270 review process and to make it clear that such a process should include an assessment of the merits of the decision ...
147. The Council has subsequently indicated to me its commitment to fully implementing this recommendation, as well as commencing a full merits review of the decision.
148. I note that one audit council made a submission to me on this issue, recognising that the Local Government Act does not restrict internal reviews to process only, and therefore that merits review was part of the existing statute.

²³ *Valuing Complaints* - An audit of complaint handling in South Australian councils - Ombudsman SA, November 2011, p.65.

²⁴ The council subject to the investigation was not one of the 12 councils involved in this audit.

Part 5 - Governance Standards and Administrative Law

149. Instead, they argued that in some cases, the right to challenge a decision of the elected council body (as distinct from the council administration) has led to delays in implementation of project decisions at significant cost to ratepayers and/or third parties. On this basis, the City of Mitcham thought the legislation needed to be amended because:

We are concerned that complainants are using the s270 process as an opportunity to try to get a decision they don't like overturned (irrespective of whether they believe the process was right or wrong) or are using the s270 provisions to simply delay or frustrate the implementation of a valid Council/Administrative decision...

Council supports the right of customers/residents to lodge a complaint or to request a review of a decision if they feel that the process was unfair or flawed. However, this review process should not be used to frustrate the business of Council or the implementation of lawful decisions. Local Government is the only level of government subject to such review rights and as such should not be subjected to excessive additional costs or delays due to these provisions.

150. In fairness to the two councils supporting a legislative amendment to disallow merit reviews, I acknowledge here that some others, notably the City of Norwood Payneham & Saint Peters, also raised concerns with me about the potential for lawful council decisions to be frustrated by internal review applications.²⁵
151. However, it is not accurate to assert that only local government is subject to the exercise of internal review rights by citizens. Many agencies at state and federal level have formal systems of internal review, and it may be provided for in legislation. Some decisions are also subject to external review by a tribunal or a regulator, reviewing decisions under a decision-making power, or through the auspices of an independent officer from another agency. Nevertheless, I acknowledge that there is no comparable right to review decisions made by the Cabinet of a State or the Federal government.
152. The City of Charles Sturt commented on this issue. They decided that the review of a council decision should be retained, but that the statute should be clarified to explicitly state whether the internal review should be merit based or process based. They said:

Section 270's primary purpose should be to provide an Internal Review Process for decisions. It would be good to have clarity as to if the scope should be a review of the decision making process or the decision itself (or both). That is, does it confer an 'appeal right' of the decision or should it look only at the decision making process for future learning? If it is to confer an appeal right, at what point can a decision be acted upon? Should action be halted once a Review of Decision application is made and what would prevent this being misused to delay by an aggrieved party?

153. The short answer to the very reasonable questions posed by the council is that the law confers a right to both merit and process review of decision. The statute is clear, if not explicit. I agree that there should be definition about time limitations for an internal review of decision application. In my view, it is

²⁵ See the *Eastern Courier Messenger*, March 16, 2016 p.15: '\$5m Oval upgrade delayed'. The story tells of a resident's complaint leading to an internal review which took three months to complete. The council was quoted as saying the review was 'partly responsible' for a delay in work commencing on an upgrade of Norwood Oval.

not reasonable that people can ask councils to review decisions that were made years ago. Councils have a responsibility to contain costs, including for legal services provided. They cannot be expected to revisit decisions where decisions are already long ago implemented. There should also be a reasonable emphasis on informal and alternative dispute resolution options to resolve matters before a formal review is conducted.

154. Having said that, the legislation provides for members of the public to have access to the formal review of decision mechanism. Notwithstanding some concerns about individual cases taking too long, and delays in implementing some decisions, I have no body of evidence before me that indicates the internal review process is too onerous for councils to manage. I have concluded that councils need to accept the parameters of the law and manage their internal review processes accordingly.²⁶

5.1.3 Do councils need more governance support?

155. One of the terms of reference for this audit covers identifying opportunities for administrative improvement in councils' use of the section 270 internal review procedures. At the interview stage of the audit, I asked all councils a question about their internal governance support arrangements and the importance of these dedicated resources to the handling, resolution and learning from complaints - including internal reviews. I also inquired about the councils membership, or otherwise, of the Local Government Governance and Policy Officers Network (GPON).
156. Nine of the 12 councils involved in the audit had a dedicated governance officer or team as part of their senior administrative structure. The role of the 'governance team' is, generally speaking, to provide policy development and review, training for staff and council members, legislative advice and complaint handling services to the council and its senior managers.
157. Some councils have composite teams or units with titles such as Governance, Governance and Risk and the Governance and Business Support Team. Some are small, with only a single Governance Officer. Larger councils may have teams with six to eight staff with a range of significant governance and business support roles allocated to them. There is broad agreement across the sector that governance support is an increasingly important area of council operations and needs to be appropriately resourced.
158. In their discussion of approaches to internal reviews and governance issues, the Loxton-Waikerie, Port-Pirie and Yankalilla councils described inter-council cooperation models and partnerships that I found to be both practical and creative.
159. Yankalilla has developed a governance advisory relationship with the much larger and better resourced Onkaparinga council. Port Pirie has supported the neighbouring Flinders Rangers Council by conducting an internal review for them; while Loxton-Waikerie has entered into a formal governance

²⁶ I acknowledge here the comment made by the CEO of the City of Mitcham who observed that changing a council decision requires a majority of council [elected] members to vote for the decision to be overturned. He said that 'there is already provision for this to occur via a rescission motion; s270 is not required in my view. If there is no Elected Member willing to move a rescission the review will not succeed. If the decision was made by Administration I would support a review of the decision under s270 to occur'.

support relationship with the City of Unley that will involve training and secondments across both councils.

160. Many of the 12 audit councils also mentioned their use of private legal services for governance advice; although some expressed reservations about expenditure of ratepayer's money on lawyers. Three councils communicated a desire to see the LGASA re-establish its now defunct 'legal services unit' which had been valued as source of information and advice on some of the more complex governance matters. The CEO of City of Mitcham said:

Mitcham was an inaugural partner and strongly supported the establishment of a legal services team within the LGA to provide expert advice based on common interpretation of the LG Act. We continue to promote the need to reinstate the service and additional services such as mediation could be included in the model.

161. Councils were also asked about their membership in, and the value of, the GPON. Councils came together to establish the Network some years ago, aiming to:

meet regularly to address issues of common interest in the areas of governance and policies for the benefit of each participating council, individuals and the advancement of governance best practice principles throughout local government in South Australia.

The Network will be available for the Local Government Association to consult on relevant governance and policy matters.²⁷

162. Ten of the 12 audit councils are members of GPON. All of these expressed support for the Network as an information sharing and problem solving forum. Some, not all, argued for an expanded role for the Network as a more formal entity along the lines of the South Australian Local Government Finance Managers Group (FMG)²⁸

163. Several suggestions were made by council CEO's to give GPON 'more clout'. A skills audit for Network members; developing and publishing a library of Frequently Asked Questions; developing a website and taking the Network to regional LGAs - were all proposed as enhancements. Without specifically advocating for the FMG model, the City of Salisbury nevertheless had a clear view about the development of the Network:

The GPON is primarily an informal group that shares information in relation to governance/policy matters. There would be some value in a more structured approach from the GPON, subject to appropriate resourcing, that would enable them to respond to sector wide initiatives in a more formal manner. It could be a useful forum to test policy issues, directions etc. to gain input from a range of councils and could also provide structured feedback to the LGA in relation to council matters. There is a point of difference between the operational experience of Governance officers that contribute to the network and the LGA perspective, which is more of a policy/political focus and there could be merit in the LGA working more closely with the GPON.

²⁷ *Terms of Reference* - South Australian Local Government Governance and Policy Officers Network, May 2014. See Appendix C attached to this report.

²⁸ Part of the FMG's role is carrying out projects and research into a range of financial management topics. The Group has its own website and publishes reports, manual and guidelines for use by practitioners in SA councils.

164. I consider that the many governance issues raised by councils throughout this audit are evidence that councils are keen to find ways to strengthen and develop their in-house governance expertise. I note also the creative ways in which councils are looking to support each other on matters such as section 270 review procedures and interpretation of the Local Government Act and Regulations.
165. In my view, there is an argument for GPON to take a stronger governance leadership role across the sector. There may be value in establishing a GPON website presence to promote best practice and aim for consistency and excellence in governance standards. There may also be an opportunity for the Network to work with the LGASA on model policy development, and to take and disseminate advice on legal matters relevant to local government.

Conclusion

The evidence from councils about the value of the GPON as a forum for issues of common interest in governance policy and practice is strong. A majority of South Australian councils now participate and there is a clear body of support for GPON to extend its influence and relevance across the local government sector in its area of expertise.

Recommendation 7

That the existing membership and leadership of GPON consider if there is a case to be made to all councils for an expanded role for the Network - whether this be expanded membership, development of a website and/or project and research relevant to governance standards in councils - or other governance priority identified by the Network.

6.1 Conclusions

166. It is perhaps ironic that the *Local Government (Accountability and Governance) Amendment Act 2015* finally enabled the abolition of the 1934 Local Government Act. With it went the last remnants of the nineteenth century system of governance where the elected bodies of local government were 'judges in their own cause' and no right to review of decisions existed for citizens.
167. I highlight the observations of the 1970 Local Government Act Revision Committee, whereby a right of review was proposed to extend the democratic rights of citizens and ratepayers to enable council decisions to be challenged. In so doing, the principles that underpin section 270 of the Act were also articulated as a stimulus to enable better decision making in councils.
168. This audit has provided some evidence that this is the case. Although the use of section 270 reviews is still uneven and inconsistent, there is some confirmation from councils that the reviews are being conducted more confidently, openly and with clearer resolutions in mind. If this is, in fact, the case, the right to review is a 'pressure release' mechanism that adds to the credibility and positive public image of councils. This is particularly important in an era where good governance is expected and valued.
169. I consider that the affirmation by councils of the need for an internal review mechanism is confirmation that councils are willing to strengthen and develop their decision making accountability measures. Many councils are also looking to promote these mechanisms to the public. I note also the creative ways in which some councils are looking to support and collaborate with each other on governance matters.
170. If my recommendations are adopted by councils, there is every chance that the recent trend toward the public showing greater confidence in the section 270 review process will continue. If that is the case, I hold a reasonable expectation that internal 'testing' of decision making will demonstrate both fairness to the public and excellence in governance standards.

Appendix A



AUDIT OF LOCAL GOVERNMENT ACT SECTION 270 INTERNAL REVIEW OF COUNCIL DECISIONS PROCEDURES - JUNE 2015

COUNCIL AUDIT SURVEY

As part of a more detailed audit of a select number of councils, the Ombudsman is seeking feedback from all South Australian councils on compliance with the section 270 Internal Review of Council Decisions provisions of the *Local Government Act 1999*.

Data from this proforma will be included in the final audit analysis. The information from each council will be collated for a report to be made to the Parliament in 2016.

A completed copy of this two question survey is requested by **Friday, 31 July 2015** to Ombudsman SA - PO Box 3651 Rundle Mall SA 5000.

(Please tick the relevant multiple choice box and make any comment below)

Section 270 Internal review of council decisions

1. Has your council a current internal review of council decisions policy/procedure which complies fully with the requirements of section 270 (1) to (9) of the *Local Government Act 1999*, including section 270(2)(ca) ?

- ☐ YES
☐ NO *(please explain)*

Comment:

2. When is the council's internal review of council decisions policy/procedure next due for review?

Next review date.....

Council name.....

CEO *(for sign-off)*

Name.....

Signature.....

Date.....



AUDIT OF LOCAL GOVERNMENT ACT SECTION 270 INTERNAL REVIEW OF COUNCIL DECISIONS PROCEDURES - 2015

COUNCIL AUDIT QUESTIONNAIRE

As part of its administrative improvement role, Ombudsman SA is undertaking an operational audit of a sample group of 12 councils. The aim is to highlight the operation of section 270 of the *Local Government Act 1999* (the Act). Specifically, the focus of the audit is an examination of council compliance with, and the implementation of, the section 270(1) to (9) requirements for internal review of council decisions.

The audit does not include an examination of general complaint handling policies and procedures which are mandated under section 270(a1) and (a2) of the Act.

This document is in addition to the Council Audit Survey sent to all SA councils in June 2015. It commences Stage 2 of the audit process.

Data from this questionnaire will be included with other council responses. The information from each council will be analysed for a report to be made to the Parliament in 2016.

A completed copy of this questionnaire is requested by **Friday 11 September 2015** to Ombudsman SA - PO Box 3651 Rundle Mall SA 5000.

If it is deemed desirable/necessary, the Ombudsman will make an appointment to meet with council representatives to discuss issues arising from council responses.

Council details

Council name.....

CEO (for sign-off)

Name.....

Signature.....

Date.....

(Please tick the relevant multiple choice boxes and attach additional pages where more space is required for comments)

Appendix B

Availability of internal review policy/procedure to the public

3. Considering the availability of the council's section 270 internal review policy/procedure to members of the public, do you consider that: *(Please tick as many boxes as are relevant)*

- ☐ The policy/procedure is in a prominent place on the council website
- ☐ The policy/procedure could be more prominently displayed *(please explain)*
- ☐ The policy/procedure is not available on the council website *(please explain)*
- ☐ The council does not promote the internal review policy/procedure as we prefer to resolve matters before a formal review is necessary *(please explain)*

Comment:

Applications for review which relate to rates or service charges

4. Does your council's current internal review of council decisions policy/procedure include a provision to ensure that applications that relate to rates or service charges can be dealt with promptly? [Section 270(2)(ca)]

- ☐ YES
- ☐ NO *(please explain)*
- ☐ No, but currently under review *(please explain how/when)*

Comment:

Time limitations on applications for an internal review of decision

5. The Act does not provide for any time limitation on applications for internal review. However, some councils require applications to be lodged within a certain time period. What do you think should be a reasonable benchmark across the local government sector?

- ☐ Three months
- ☐ Six months
- ☐ Twelve months
- ☐ Two years
- ☐ No time limitation

Comment:

Decisions to which the internal review process can apply/cannot apply

6. Subject to a bona fide application, would your council conduct a section 270 internal review of decision for any of the following: (Please tick as many boxes as are relevant)

- ☐ A complaint where there is no appeal right (eg non-complying development)
- ☐ Where the complaint relates to how the council has handled alleged breaches of the Development Act (eg decisions about whether to take enforcement action)
- ☐ Where the complaint relates to how the development was categorised (and there is no review right available under section 86(1)(f))
- ☐ Where the matter relates to conduct of a delegate but doesn't fall within the Minister's Code in the Development Act
- ☐ A complaint relating to an expiable offence
- ☐ None of the above

Comment:

Conduct of a section 270 internal review of decision

7. The issue of separating the original decision-maker from the internal review decision-making process has been raised with the Ombudsman. In general terms, who is best placed to conduct an internal review of decision for the council? (Please tick as many boxes as are relevant)

- ☐ The CEO
- ☐ The original decision-maker
- ☐ A senior officer of the council not part of the original decision
- ☐ Lawyers engaged by the council
- ☐ The Local Government Governance Panel
- ☐ A neighbouring council CEO or senior manager
- ☐ An independent person with a knowledge of local government governance issues but not currently serving

Comment:

Your experience with section 270 internal review of decisions

8. In your return to the Local Government Grants Commission for 2013-14 council reported numbers of complaints received under the 'Internal Review of Council Decision Procedures'. If you received complaints, please attach a brief summary of all complaints under the following headings:

- Nature of complaint
- Identity of Reviewer
- Review process

Appendix B

- Giving reasons for the decision
 - Resolution
- ☐ No s.270 internal review complaints received

Remedies

9. If your council has conducted one or more internal review of decision in the **past two years**, which of the following remedies has been applied? *(Please indicate how many times in the comment box)*

- ☐ Provide an explanation
- ☐ Change the decision
- ☐ Mediation
- ☐ Admission of fault
- ☐ Correction of records
- ☐ Remission of a penalty
- ☐ Apologise
- ☐ Pay or provide financial or remedial compensation
- ☐ Waive a debt
- ☐ Change a relevant council policy or procedure
- ☐ Discipline staff for an error
- ☐ Other *(please explain)*

Comment:

Annual reporting requirements

10. Section 270(8) requires a report to be produced annually which relates to the number of internal review applications, the kinds of matters considered and the outcome of applications dealt with. Has your council produced a report and published it in the 2013-14 Annual Report? *(If yes, please attach the AR extract)*

- ☐ YES
- ☐ NO

Comment:

Policy/procedure standards and consistency across the local government sector

11. The Local Government Association of South Australia (LGA) has a current *Internal Review of a Council Decision Model Policy and Procedure* in circulation. Do you consider that the LGA Model Policy and Procedure should be universally adopted as a standard across the local government sector in order to provide consistency to all members of the public?

- ☐ YES
- ☐ NO

- ☐ Yes, in large part, but allowing for some local factors (*please explain*)

Comment:

The legislation and the regulations

12. Section 270 of the Act was recently amended to incorporate new requirements, including a policy covering complaints about the services and actions of the council. Do you consider the current section 270 legislation is working effectively?

- ☐ YES
☐ NO, it needs amendment(*please explain*)
☐ The current section 270 should be scrapped and replaced with (*please explain*)

Comment:

Your contact with Ombudsman SA on section 270 matters

13. Ombudsman SA frequently refers complaints from members of the public back to the relevant council for a 'section 270 internal review'. Can you please comment on this practice from your perspective and provide any relevant case study information about how you deal with such referrals.

Comment:

14. Please attach any other comments you wish to make on the operation of section 270(1)-(9) of the Act.

Thank you for completing this survey.

Appendix C

TERMS OF REFERENCE***South Australian Local Government
Governance and Policy Officers Network***

Last amended May 2014

Purpose

The purpose of the South Australian Local Government Governance and Policy Officers' Network (Network) is to meet regularly to address issues of common interest in the areas of governance and policies for the benefit of each participating Council, individuals and the advancement of governance best practice principles throughout Local Government in South Australia.

The Network will be available for the Local Government Association to consult on relevant governance and policy matters.

Membership

The Network will consist of staff representatives from South Australian Councils who have a role or work in the areas of governance and legislative policy development and review.

Representatives from the Local Government Association and the State Government Department relevant to Local Government may attend Network meetings as invited guests.

Key staff, consultants or representation from stakeholder groups may attend meetings from time to time to provide information and recommendations. Attendance will be by invitation from the Network only.

Protocols and Operating Principles

Decisions made by consensus will be preferred and it is not intended that votes be taken on matters.

Confidential items will not be minuted and discussion should remain confidential where agreed.

Participating Councils will be invited to provide the resources to support the Network including briefing papers, which may be prepared for each agenda item. Where possible all documentation will be prepared and distributed via electronic methods thus avoiding costs of printing and postage.

The Agenda will be distributed to the Network three days prior to meeting dates, and meeting noted distributed as soon as possible after meetings.

The Network will meet quarterly at a time as agreed by the Network. The venue will rotate around various councils mainly within the metropolitan area of Adelaide.

No membership fees will be applicable for membership to the Network.

Role of Chairperson

The Chairperson shall be a person appointed from the membership for the purpose of chairing meetings. This position will be reviewed in the first meeting of each calendar year.

The Chairperson is responsible for authorising any correspondence from the Network.

Role of Secretary/Deputy Chair

The Secretary/Deputy Chair shall be a person appointed from the membership for the purpose of coordinating meetings, maintaining the membership database, recording notes of key matters arising from each meeting and coordinating and distributing questions raised between meetings. This position will be reviewed in the first meeting of each calendar year.



Circulars

Ombudsman's Audit Report on Councils' Internal Review Procedures - Circular 51.7

To
Chief Executive Officer
Elected Members
Governance Officers

Date
19 December 2016

Contact
Andrea Malone
Email: andrea.malone@lga.sa.gov.au

Response Required
No

Summary

Councils will be aware that the Ombudsman has released the report of the audit of 12 councils and their procedures for carrying out internal reviews of council decisions. The report makes seven recommendations, some of which apply to all councils, and responses are due by 31 March 2017. The LGA is working with the Ombudsman with a view to assisting councils in dealing with the issues raised.

The Ombudsman has released the report of the audit of 12 councils and their procedures for carrying out internal reviews of council decisions. The report, *Right of Access*, makes seven recommendations, six of which apply to all councils. Responses to these recommendations are due to the Ombudsman by 31 March 2017.

A copy of the report is available [here](#).

The LGA CEO and Director Legislation met with the Ombudsman to discuss the report, seek clarification of some issues and discuss ways of supporting councils to take the recommendations forward through co-operative arrangements. The LGA has undertaken to review and revise its model policy and procedure for internal review of council decisions in light of the report. The Ombudsman has agreed to provide feedback on the draft policy. The LGA will consult with the Ombudsman on issues arising from some of the recommendations.

One of the issues discussed in the meeting was the scope of internal review under section 270 of the Local Government Act. The LGA is looking to clarify policy to address uncertainty about the appropriate application of merits review versus process review. In addition, the LGA will seek to provide more certainty around the scope of internal reviews to decisions made under other statutes where appeal or review procedures already exist. We are proposing to work with the Ombudsman on the matters of detail during the course of revising the model procedures.

In addition, one of the Ombudsman's recommendations raised the possibility of regional LGAs establishing panel arrangements to assist member councils to manage internal review applications. The LGA will be communicating further with the regional LGAs on this matter to discuss approaches to implementing this recommendation.

For further information please contact Andrea Malone (andrea.malone@lga.sa.gov.au)



Internal Review of Council Decisions Policy and Procedure

Policy Type:	Policy		
Approved By:	Council	Decision No:	0618/2015
Approval Date:		Last Reapproval Date:	28 September 2015
Review Date:	28 September 2017	Internal Reference No.:	
Department:	CEO and Governance	Division:	Governance
Function:	9 - Governance	Responsible Officer:	Manager, Governance

A - PREAMBLE

1. The City of Salisbury is committed to transparency in decision making, and to providing access to a fair and objective procedure for the internal review of decisions.
2. Grievances may arise as a result of dissatisfaction with a decision made by Council, or its employees, on a wide range of issues including policy, procedure, service, fee, etc. All attempts will be made to resolve grievances quickly and efficiently, without the need for a formal request for review.
3. This procedure provides information on formal requests for internal review of decisions of Council, its employees, and other people acting on behalf of Council.
4. Dealing with grievances at the local level is the most effective way of resolving matters quickly. Applicants for review of decisions will be encouraged to participate in the review handling process cooperatively. However, nothing in these procedures negates citizen's rights to seek external review through the State Ombudsman, other legal appeal processes, or the Courts at any time during the internal review process.

B - SCOPE

The Local Government Act

1. The City of Salisbury's Internal Review of Council Decisions Procedure has been adopted in accordance with Section 270 of the Local Government Act 1999. The 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. 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

3. Council also has a Customer Compliments, Comments and Complaints Policy for dealing with complaints and requests for service. As a general rule, Council will promote that Policy with its associated procedures in the first instance as it offers the potential for immediate resolution.

4. An Internal Review of a Council Decision is the third tier in Council's complaints handling process 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 Policy.

Matters outside the scope of the Policy

5. Other provisions in the *Local Government Act 1999* 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).
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 HACC services, where specific complaint/review mechanisms are identified.
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.
8. Full cooperation with any such authority will be afforded as necessary, in order to resolve the matter as quickly as possible.

C – POLICY PURPOSE/OBJECTIVES

1. The purpose of the Internal Review of Council Decisions Policy and Procedure is to provide open, responsive and accountable government and access to a fair, consistent and structure process for any party dissatisfied with a decision which has been made by Council or its agents with confidence that these matters will be dealt with objectively, fairly and in a timely manner.
2. Section 270 of the Local Government Act 1999 (the Act) requires Council to maintain "policies, practices and procedures" for dealing with request 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.
3. An internal review of a Council decision enables Council to reconsider all the evidence relied on to make a decision, including new evidence if relevant.

D - 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 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.

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.

E - POLICY STATEMENT

1. Council is committed to open, responsive and accountable government. This includes providing processes by which citizens, who feel they have been adversely affected by a decision of Council, can have their grievances considered.

Equity of Treatment

2. The Internal Review of Council Decisions Policy and Procedure is based on five principles, which are fundamental in the way Council approaches applications for review of Council decisions. They are:
 - 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;

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

Applications for Review of a Decision

Making an application

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.
4. An application must be in writing within 6 months of the original 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).
5. An application must be address 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
 12 James Street
 SALIBSURY SA 5108

or

By email:

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

or

By facsimile:

Internal Review Request
 The Chief Executive Officer *or* Mayor

City of Salisbury
(08) 8281 5466

6. 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.
7. 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.
8. 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.
9. 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.
10. Where the CEO or delegate, or Mayor, or reviewing officer has reasonable suspicion that the complaint involves corruption in public administration, serious or systemic misconduct in public administration, or serious or systemic maladministration then the matter **must** be reported to the Office of Public Integrity (OPI) in accordance with the *Independent Commissioner Against Corruption Act 2012*.
11. 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;
 - 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.
12. 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.
13. 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

14. 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.
15. 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.
16. 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).”
17. 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

18. 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.
19. In most cases requests for review will be considered and determined within 28 days. However, in some circumstances the review process may take longer.
20. The applicant will be encouraged to participate cooperatively in the review process.

21. The applicant will be kept informed about the progress of the review either by email, letter or telephone.
22. 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.
23. The applicant will be informed in writing of the outcome of the review within 5 business days of the determination being made.
24. 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.
25. There is no application fee for a formal internal review under section 270(1) of the *Local Government Act 1999*.

Procedural Fairness

26. 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.
27. "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

28. 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

- 29. 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.
- 30. The applicant will be encouraged to observe confidentiality as this is likely to achieve the fairest result for all concerned.
- 31. The applicant's personal information will be used by the reviewing officer in relation to investigating and reviewing the application.
- 32. Only relevant parties will be involved in the internal review process.
- 33. 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*.
- 34. 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*.
- 35. Information contained within the application may be accessible under the *Freedom of Information Act 1991*.

Record keeping

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

Annual Reporting

- 40. In accordance with section 270(8) of the Local Government Act 1999, 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

- 41. At its absolute discretion, and in accordance with section 271 of the Local Government Act 1999, 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.
- 42. 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 *Local Government Act 1999*.

F - LEGISLATION

1. Local Government Act 1999
2. Freedom of Information Act 1991
3. Independent Commissioner Against Corruption 2012
4. Ombudsman Act 1972
5. State Records Act 1997

G - ASSOCIATED POLICIES/PROCEDURES

1. City of Salisbury Customer Compliments, Comments and Complaints Policy

Document Control

Document ID	Internal Review of Council Decisions Policy and Procedure
Prepared by	Joy Rowett
Release	1.00
Document Status	Approved
Date Printed	13/10/2015



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 Referred to:.....

Details of Application:

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

.....

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

.....

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

Please complete this form in conjunction with the Internal Review of Council Decisions Procedure.

City of Salisbury Submission to Ombudsman SA Report <i>“Right of Review: An audit of Local Government Internal Review of Council Decisions Procedures, November 2016</i>				
Rec. No.	Heading	Recommendation	Response	
1	Availability of internal review policy to the public	That all councils highlight a direct link on their website homepage to a plain English description of the procedure available for making an application for internal review of council decision. The procedure could usefully be linked to the council’s complaint handling policy information that also outlines steps that can be taken for informal resolution of complaints.	Support	<p>This recommendation would make the Internal Review of Decision Policy/Procedure more accessible to the public. In addition, including a link or reference to Council’s complaint handling policy would assist with understanding of the complaint process in totality and provide information on resolution pathways available to the public.</p> <p>Council’s current Internal Review of Council Decisions Policy and Procedure and Customer Compliments, Comments and Complaints Policy already provide references to the other policy/procedure.</p>
2	Compliance with the Local Government Act	That all councils ensure that their internal review of decisions procedure is fully compliant with the requirements of Section 270 of the Local Government Act 1999. Further, that all council CEOs confirm in writing to the Ombudsman their full compliance with section 270 of the Act by 31 March 2017.	Support	<p>There is value in an active review of the Internal Review of Decisions procedure's compliance with the requirements of section 270 of the <i>Local Government Act 1999</i> and the Chief Executive Officer confirming the current procedure meets those requirements.</p> <p>The City of Salisbury's Internal Review of Council Decisions Policy is fully compliant with the requirements of section 270 of the <i>Local Government Act 1999</i>, in particular including the provisions of section 270(2)(ca) for the prompt dealing of applications concerning the impact that any declaration of rates or service charges may have had on ratepayers.</p> <p>This response also addresses the requirement for the City of Salisbury to confirm in writing its full compliance with Section 270 of the Act.</p>

City of Salisbury Submission to Ombudsman SA Report <i>“Right of Review: An audit of Local Government Internal Review of Council Decisions Procedures, November 2016</i>				
Rec. No.	Heading	Recommendation	Response	
3	Time limits on applications for review	That all councils include a reference to a six month time limit for accepting internal review of council decision applications in a revised version of their internal review of decisions procedure. Consideration should also be given to the exercise of a discretion by councils to allow a longer time limit to apply in particular cases.	Partial Support	<p>The City of Salisbury supports the first part of this recommendation on the basis that this provision recognises the time taken to implement decisions, and the likelihood of the public not being aware of the processes available to them to seek a review of a council decision. Allowing a period of 6 months, provides sufficient time for individuals to make contact with a council to express concerns about an issue, and then be provided with information about options available to them.</p> <p>The City of Salisbury does not support the exercise of a discretion by councils to allow a longer time limit to apply in particular cases. Determination of the time period needs to be objective providing some certainty to councils as to the period within which a review can be requested.</p>
4	Decisions to which the internal review process can apply/cannot apply	That all councils revise the part of their internal review of decision procedure that deals with ‘Matters outside the scope of the policy and procedures’ to explicitly state that matters that fall outside statutory appeals procedures will be considered for the conduct of a section 270 review on the merits of the individual application. Further, that councils discuss with the LGASA the desirability of including this commitment in the LGASA <i>Internal Review of a Council Decision Model Policy and Procedure</i> .	Support	<p>In relation to matters that fall outside statutory appeal procedures, the City of Salisbury agrees there may be occasions where a matter should be afforded consideration of a review. In those circumstances the merits of the matter should be considered on a case by case basis. Given this, it would be appropriate for information to that <i>effect</i> to be included within the Review of Decisions procedure.</p> <p>It is noted that in its Circular 51.7 dated 19 December 2016, the LGA has undertaken to review and revise its model policy and procedure for internal review of council decisions in light of the report.</p>

City of Salisbury Submission to Ombudsman SA Report <i>“Right of Review: An audit of Local Government Internal Review of Council Decisions Procedures, November 2016</i>				
Rec. No.	Heading	Recommendation	Response	
5	Independent conduct of an internal review of decision	That all councils, through the auspices of regional Local Government Associations, consider and report to the Ombudsman by 31 March 2017 on the option of developing regional panels of independent reviewers who can assist councils with complex review matters.	Not support	<p>Councils should retain the discretion and flexibility to engage resources to assist with the delivery of services in a manner that achieves greatest efficiency and effectiveness for the community.</p> <p>Whilst there could be merit in an LGA convened panel of independent reviewers, similar to the Local Government Governance Panel, there should be no obligation on councils to access the panel of providers.</p> <p>It is the practice of the City of Salisbury to evaluate each request for review of decision and make a decision as to the most appropriate resource to undertake the review. Where necessary, external resources have been engaged in accordance with Council’s Procurement Policy.</p>

City of Salisbury Submission to Ombudsman SA Report <i>"Right of Review: An audit of Local Government Internal Review of Council Decisions Procedures, November 2016"</i>				
Rec. No.	Heading	Recommendation	Response	
6	Matter types and learning outcomes from internal reviews of decision	That all councils periodically evaluate their section 270 review investigations and document learning outcomes relevant to their administrative practices and functional responsibilities. That, as appropriate, these learning outcomes are shared with the Local Government and Policy Officers Network (GPON) and relevant local government interests.	Not support	<p>The City of Salisbury supports the practice of reviewing investigations and documenting learning outcomes relevant to administrative practices, however does not support the imposition of an obligation to share the learning outcomes with parties external to the Council. This option should be at the discretion of the Council and should take into consideration the subject matter of each review (i.e. whether the review relates to sensitive or confidential information).</p> <p>Members of the Local Government Governance and Policy Officers Network regularly share information with a view to streamlining processes and ensuring consistency across the local government sector. This may include consideration of section 270 review experiences from time to time but there should be no obligation to do so.</p> <p>Similarly, as a Membership organisation, the Local Government Association's role is not to receive reports on operational matters of councils. Councils should retain the discretion to provide information to the LGA as and where they consider relevant.</p>

City of Salisbury Submission to Ombudsman SA Report <i>“Right of Review: An audit of Local Government Internal Review of Council Decisions Procedures, November 2016</i>				
Rec. No.	Heading	Recommendation	Response	
7	Do councils need more governance support	That the existing membership and leadership of GPON consider if there is a case to be made to all councils for an expanded role for the Network – whether this be expanded membership development of a website and/or project and research relevant to governance standards in councils – or other governance priority identified by the Network.	N/A	This is a recommendation for the Governance and Policy Officers’ Network to consider.

ITEM	3.6.3
	RESOURCES AND GOVERNANCE COMMITTEE
DATE	20 March 2017
HEADING	2017 National General Assembly of Local Government - Call for Motions and Attendance at Assembly
AUTHOR	Michelle Woods, Projects Officer Governance, CEO and Governance
CITY PLAN LINKS	4.1 Strengthen partnerships that enable us to better address our community's priorities.
SUMMARY	The National General Assembly (NGA) of Local Government will take place in Canberra from 18 – 21 June 2017. Motions are being called for the NGA and close 21 April 2017.

RECOMMENDATION

1. The information be received.

ATTACHMENTS

This document should be read in conjunction with the following attachments:

1. National General Assembly Provisional Program

1. BACKGROUND

- 1.1 The National General Assembly (NGA) of Local Government will be held 18 – 21 June 2017 at the National Convention Centre in Canberra. The theme for the 2017 NGA is 'Partners in an Innovative and Prosperous Australia'. The program is attached for information.
- 1.2 The Australian Local Government Association Board has called for motions from Councils. They must be relevant to the work of local government nationally and must complement or build on the policy objectives of state and territory associations.
- 1.3 The deadline for submitting motions to the NGA is Friday 21 April 2017.

2. CONSULTATION / COMMUNICATION

- 2.1 Internal
 - 2.1.1 Advice was provided to Elected Members via email on 6 March asking for registrations of interest for attendance at the NGA.
 - 2.1.2 At the time of writing this report, no Elected Members had registered an interest in attending.
- 2.2 External
 - 2.2.1 Nil.

3. REPORT

- 3.1 The Australian Local Government Association (ALGA) is the national peak advocacy body for local government. ALGA's work includes but is not limited to the establishment of national policy and extensive liaison and lobbying with departments, Ministers and other parliamentarians at the Commonwealth level to achieve better outcomes for local councils.
- 3.2 The ALGA Board is comprised of delegates from each member association who refer matters of national relevance to the ALGA Board for consideration at regular Board meetings.
- 3.3 The 2017 National General Assembly (NGA) of Local Government, to be held in Canberra from 18 – 12 June is an opportunity for individual councils to identify matters of national relevance to the sector and to submit notices of motion to seek support at the LGA for these matters to be considered by ALGA as national policy, for its advocacy role or for more immediate action by ALGA on behalf of the sector.
- 3.4 As such the ALGA Board is calling for motions for the NGA under the theme of 'Building Tomorrow's Communities'. This year, the NGA will focus debate on motions that address how councils can work in partnership with the Australian Government in particular to meet the current and future needs of local communities.
- 3.5 To be eligible for inclusion in the NGA Business Papers, and subsequent debate on the floor of the NGA, motions must meet the following criteria:
 - 3.5.1 Be relevant to the work of local government nationally;
 - 3.5.2 Be consistent with the themes of the NGA;
 - 3.5.3 Complement or build on the policy objectives of our state local government association;
 - 3.5.4 Be from a council which is a financial member of our state local government association;
 - 3.5.5 Propose a clear action and outcome; and
 - 3.5.6 Not be advanced on behalf of external third parties that may seek to use the NGA to apply pressure to Board members or to gain national political exposure for positions that are not directly relevant to the work of, or in the national interests of, local government.
- 3.6 Once all motions have been received, they are reviewed by the National General Assembly Committee as well as by State and Territory Local Government Associations to determine their eligibility for inclusion in the NGA Business Papers. When reviewing motions, the Committee considers the importance and relevance of the issue to local government. It should be noted that motions should not be prescriptive in directing how the matter should be pursued. Any motion deemed to be primarily concerned with local or state issues will be referred to the relevant state/territory local government association, and will not be included in the Business Papers.
- 3.7 Motions that are accepted and placed on the Agenda for the NGA will be debated throughout the conference.

- 3.8 Elected Members were advised of the upcoming NGA via email on 6 March 2017 asking to register their interest in attending.
- 3.9 At the time of writing this report, no Elected Members have registered an interest in attending.
- 3.10 Should the Resources and Governance Committee recommend an Elected Member attend the NGA from 18 to 21 June 2017, anticipated costs are broken down as follows:

Full Registration

Anticipated costs	Registration (early bird rego req by 6/5)	\$ 929.00	\$1,029 if after 6/5
	Regional Development Forum (Sun 19/6)	\$ 225.00	if registered for NGA
	Welcome Reception (Sun 19/6)	\$ -	included in full rego
	ALGWA Breakfast (Mon 20/6)	\$ 80.00	cost to be confirmed
	Buffet Dinner (Mon 20/6)	\$ 100.00	
	Regional Capitals Australia Networking Breakfast (Wed 22/6)	\$ 100.00	cost to be confirmed
	General Assembly Dinner (Tues 21/6)	\$ 130.00	
	Return airfare	\$ 500.00	approx
	Accommodation x 3	\$ 500.00	approx
	Meals + incidentals	\$ 150.00	approx
	CabCharge vouchers		?
		\$ 2,714.00	approx

Day registrations are available for Monday and Tuesday at a cost of \$489 per day.

Voting on Motions

- 3.11 This will only be applicable if an Elected Member will be attending the NGA.
- 3.12 Each Council is entitled to one voting delegate in the debating sessions. While it is not necessary for Council to advise the ALGA of the name of the voting delegate, it will be necessary for Council to appoint the voting delegate.
- 3.13 Based on the release of NGA Business papers last year, it is anticipated they will not be available until late May. This will not provide enough time for presentation of the motions to Council at the May Council meeting. The timing of the NGA also means that there is unlikely to be an opportunity to present the motions to the Resources and Governance Committee in June (Resources and Governance Committee meeting is scheduled for 19/6/17) to enable Council to direct the voting delegate via that meeting.
- 3.14 There are four options available to Council in order to provide guidance to the voting delegate in relation to NGA motions:
- 3.14.1 If the release of the Business Papers is prior to the June Informal Strategy Session, the motions could be reviewed by Members and guidance provided to the voting delegate in relation to Councils preferred voting strategy at the Informal Strategy Session. It is important to note that Informal Strategy meetings are not a formal decision making forum, therefore any advice provided to the voting delegate would not be by way of a Council resolution.
- 3.14.2 The CEO and Mayor (and other relevant staff if required) could meet with the voting delegate and provide guidance on voting for NGA motions that is in the best interest of the City of Salisbury.

- 3.14.3 Council could authorise the voting delegate to review the NGA motions and determine voting for each motion in the best interest of the City of Salisbury. This would enable the voting delegate to also give consideration to information provided by other delegates during any debate on the motions. The voting delegate may wish to seek guidance from the CEO in relation to the motions if this is Council's preferred option.
- 3.14.4 Council could determine that a Special Council Meeting be convened following receipt of the NGA business papers to enable Council to direct the voting delegate in relation to voting for each motion.

4. CONCLUSION / PROPOSAL

- 4.1 Council is asked to determine if there are any issues that warrant a motion being submitted to the NGA of Local Government being held in Canberra from 18 – 21 June 2017.
- 4.2 Council is also asked to determine if it should be represented at the NGA, and if so, resolve which Elected Member that should be.
- 4.3 Should a representative be appointed, Council will then need to determine the best way in which to provide voting guidance.
- 4.4 The NGA motions are intended to provide the basis of policy setting and representations to the Federal Government for the ALGA Board on issues of national significance to Local Government. They are not motions that, if passed, become binding on the ALGA Board.
- 4.5 On that basis, it does not seem necessary for a Special Council meeting to be convened as there is no direct negative consequence from Council not specifying how the voting delegate must vote.
- 4.6 The three remaining options all have merit and would all result in a City of Salisbury vote being cast at the NGA.
- 4.7 Given the non-binding nature of resolutions passed at the NGA staff recommend options 3.14.2 or 3.14.3 as the preferred approach for Council to provide guidance to the NGA voting delegate.

CO-ORDINATION

Officer:	Exec Group	MG
Date:	14/3/17	9/3/17

**18-21 JUNE
2017**

National General Assembly of Local Government 2017

PROVISIONAL PROGRAM

SUNDAY 18 JUNE

5:00 pm Welcome Reception

MONDAY 19 JUNE

9:00 am Opening Ceremony

9:10 am ALGA President's Opening

9:20 am **The Hon Malcolm Turnbull MP,**
Prime Minister (invited)9:50 am KEYNOTE SPEAKER
Laura Tingle10:30 am **MORNING TEA**11:00 am **3D City Infrastructure
Modelling**
Mayor Mark Jamieson,
Sunshine Coast Council11:20 am PANEL SESSION
**Building Tomorrow's
Communities**12:30 pm **LUNCH**1:30 pm PANEL SESSION
Governing into the future3:00 pm **AFTERNOON TEA**

3:30 pm Debate on Motions

4:30 pm **The Hon Bill Shorten MP,**
Leader of the Opposition
(invited)

5:00 pm Close

7:00 pm **DINNER****TUESDAY 20 JUNE**9:00 am **Senator the Hon Fiona Nash,**
Minister for Local Government
and Territories9:30 am PANEL SESSION
**Building Liveable
Communities**10:30 am **MORNING TEA**11:00 am **The Hon Angus Taylor MP,**
Assistant Minister for Cities
and Digital Transformation

11:30 am Debate on Motions

12:30 pm **LUNCH**1:30 pm PANEL SESSION
**Empowering Indigenous
Communities**3:00 pm **AFTERNOON TEA**

3:30 pm Debate on Motions

4:30 pm The Australian Greens,
Senator Richard Di Natale
(invited)

5:00 pm Close

7:00 pm **OFFICIAL DINNER**
Parliament House**WEDNESDAY 20 JUNE**9:00 am PANEL SESSION
City Deals

10:00 am Delegate Workshop

10:30 am **MORNING TEA**

11:00 am National Policy Initiatives

11:30 am PANEL SESSION
**Harnessing tomorrow's
technology**

12:30 pm Delegate Workshop

1:00 pm ALGA President's Close

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Department of Infrastructure
and Regional Development

ITEM	3.6.4
	RESOURCES AND GOVERNANCE COMMITTEE
DATE	20 March 2017
PREV REFS	
HEADING	Review of Extreme Heat Policy
AUTHOR	Joy Rowett, Governance Coordinator, CEO and Governance
CITY PLAN LINKS	4.4 To ensure informed and transparent decision-making that is accountable and legally compliant
SUMMARY	This report presents the Extreme Heat Policy to Council for consideration and endorsement. The Policy has been reviewed and no changes are required.
RECOMMENDATION	
	<ol style="list-style-type: none"> 1. The Information be received. 2. The Extreme Heat Policy as set out in Attachment 1 to this report (Resources and Governance 3.6.4, 20/03/2017), be endorsed.
ATTACHMENTS	
	This document should be read in conjunction with the following attachments:
	<ol style="list-style-type: none"> 1. Extreme Heat Policy
BACKGROUND	
	<ol style="list-style-type: none"> 1.1 Council's Policy Framework provides for Council Policies to be reviewed within 12 months of a general election and thereafter every two years. 1.2 This Policy was last reviewed and endorsed by Council in March 2015 and is now due again for review.
2. CONSULTATION / COMMUNICATION	
	<ol style="list-style-type: none"> 2.1 Internal <ol style="list-style-type: none"> 2.1.1 Consultation with staff as to the continuing relevance of the policies and any changes that may be required. 2.2 External <ol style="list-style-type: none"> 2.2.1 Nil
3. REPORT	
	<ol style="list-style-type: none"> 3.1 The Extreme Heat Policy has been reviewed by the Policy Owner. No changes are required in the content of the Policy to ensure its continuing relevance.

4. CONCLUSION / PROPOSAL

- 4.1 The Extreme Heat Policy as contained within Attachment 1 is recommended to Council for endorsement.

CO-ORDINATION

Officer: Executive Group
Date: 14/03/2017



Extreme Heat Policy

Policy Type:	Policy		
Approved By:	Council	Decision No:	2011/2622341
Approval Date:	23 August 2010	Last Reapproval Date:	20 March 2017
Review Date:	20 March 2019	Internal Reference No.:	
Department:	Community Services	Division:	Community Health and Wellbeing
Function:	17 - Social Cultural and Community Services	Responsible Officer:	Manager, Community Health and Wellbeing

A - PREAMBLE

1. The City of Salisbury is committed to the promotion of community awareness and education regarding the impacts associated with extreme heat conditions and the measures that can be adopted to mitigate those impacts.
2. While hot days in summer are generally expected within South Australia, it is important that people are aware of the debilitating impact extreme hot weather can have on their general well being.
3. The State Emergency Service (SASES) as the Hazard Leader for Extreme Weather Events under the State Emergency Management arrangements and key South Australian Government Departments have worked together to prepare a whole of government Extreme Heat Plan which ensures a coordinated approach to increasing community preparedness, awareness and response to extreme heat events.
4. The *Local Government Act 1999*, *Work Health and Safety Act 2012*, *South Australian Public Health Act 2011* and the *Emergency Management Act 2004* provide for Local Government to play a role in Extreme Weather Planning by promoting community awareness and education regarding the dangers and measures that can be adopted to mitigate the effects.

B - SCOPE

1. This Policy applies to all Staff, Volunteers and Elected Members of the City of Salisbury.

C – POLICY PURPOSE/OBJECTIVES

1. This Policy:
 - a. defines the City of Salisbury's commitment to supporting the community in relation to managing the impact of extreme heat conditions.
 - b. Sets out the role of Council in the provision of information and services to the Salisbury

community during extreme heat conditions.

D - DEFINITIONS

1. **Extreme Heat** – is determined in accordance with criteria established by the Bureau of Meteorology using the average daily temperature (ADT). The ADT is calculated for each day by adding the forecast maximum daytime temperature in degrees with the overnight temperature in degrees and dividing the result by two. For example, a 32C degree maximum daytime temperature and a 24C degree overnight temperature will provide an ADT of 28C degrees.
2. **Heatwave** – within South Australia the criteria for a heatwave (as specified by the Bureau of Meteorology) is 5 consecutive days with maximum temperatures of 35°C or more, or 3 days of 40°C or more.

E - POLICY STATEMENT

1. Council will provide support or assistance as requested by the SA State Emergency Service or State Government in response to extreme heat events and in accordance with the Extreme Heat Plan.
2. To ensure the best use of Council resources, emphasis will be placed on complementing and supporting existing services provided by State/Commonwealth Government Agencies and specialist organisations funded to support vulnerable members of the community, rather than the provision of 'duplicate' services.
3. Council will provide community awareness and emergency management information in local settings of vulnerable populations via existing programs and services. This will include the distribution of materials prepared by the SA State Emergency Service, State Government and specialist organisations in relation to extreme heat events as well as publication of information on the City of Salisbury website, within the Salisbury Aware Magazine and through other Council media channels as appropriate.

F - LEGISLATION

1. *Local Government Act 1999*
2. *Work health and Safety Act 2012*
3. *South Australian Public Health Act 2011*
4. *Emergency Management Act 2004*

G - REFERENCES

1. Extreme Heat Plan – SA State Emergency Services
2. Extreme Heat Guide for Local Government (Draft for Comment)

• Document Control

• Document ID	• Extreme Heat Policy
• Prepared by	• Vesna Haracic
• Release	• 5.00
• Document Status	• Draft
• Date Printed	• 15/03/2017

