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INTERNAL REVIEW OF COUNCIL DECISIONS POLICY

Latest Review Changes	Minor formatting changes, Reference to reports prepared by the Ombudsman SA for emerging issues / commentary, Name change of the policy to reflect "Internal Review of Council Decisions Policy", addition of related policies and procedures, Inclusion of a paragraph discussing the Purpose of the policy, addition definitions added, New points added at 4.1, 4.2, 4.4 & 5.1.
Previous Council Reviews	24.02.2011, 24.02.2012, 30.05.2013, 21.05.2015 26.04.2017, 29.05.2019, 27.10.21
Previous Audit Committee Reviews	08.07.2010, 30.05.2013, 09.06.2017, 17.05.2019, 20.05.21

Applicable Legislation

Local Government Act 1999
Ombudsman Act 1972

Related Policies (alphabetical list)

Employee Code of Conduct Policy
Expiation Notice Review Policy
Municipal Rating Policy
Customer Service Policy

Related Procedures

Customer Enquiry, Feedback and Dispute Resolution Procedure
Customer Complaint Form
Request for Service Form
Dispute Resolution Procedure

Reference Documents

Ombudsman SA Report "Right of Review: An audit of Local Government Internal Review of Council Decisions Procedures" November 2016

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1. PURPOSE

The Municipal Council of Roxby Downs (Roxby Council) is committed to delivering the highest level of service to the community. Section 270 of the *Local Government Act 1999 (LG Act)* provides an opportunity for those dissatisfied with a decision of Council to request an internal review. Council is committed to ensuring its processes are fair and consistent, and its approach is outlined in this policy and associated procedure.

2. INTRODUCTION

2.1. Context

Council (including employees of Council and people acting on behalf of Council) make decisions every day which impact on members of the community. It is important that these decisions are fair and objective.

This policy documents the process by which an Internal Review of a Council Decision is conducted.

2.2. Purpose

The purpose of this policy is to provide guidelines on how Council will deal with formal requests for a review of Council decisions. The aim of this policy and procedure is to ensure a fair, objective, consistent and structured process for any party that seeks a review of a Council decision. This policy does not and is not intended to exclude other rights and remedies available at law.

2.3. Legislative Framework

There is a statutory framework for Council to develop and maintain policies, practices and procedures for the review of Council decisions and requests for services.

Legislation applicable to this policy:

Local Government Act 1999

Part 2 Internal Review of Council Actions, Section 270 - Procedures for review of decisions and requests for services

Section 270 (a1) states that 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. Complaints about the actions of the Council, employees of the Council, or other persons acting on behalf of the Council.

Section 270 (1) states that 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.

Section 270 (2) states that 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;
- (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.

Pursuant to Section 270(7) of the LG Act states that nothing in section 270(7) prevents a person from making a complaint to the Ombudsman at any time under the *Ombudsman Act 1972*.

2.4. Key Principles

The policy and procedure are based on five principles, which are fundamental in the way Council approaches requests for service, complaint handling and reviews of 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
- Integration of different areas of Council where the matter under review overlaps functional responsibilities.

3. DEFINITIONS

For the purposes of this policy of the following definitions apply:

LG Act means the *Local Government Act 1999*

Administrator means the person appointed to perform the functions of the Municipal Council of Roxby Downs

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

Applicant is the party lodging a requests for the review of a decision.

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

Chief Executive refers to the person appointed to this position by the Municipal Council of Roxby Downs

Complaint refers to a customer who is dissatisfied with the service delivery of the Council or the handling of a Request for information

Council refers to the Municipal Council of Roxby Downs established under the *Roxby Downs (Indenture Ratification) Act 1982* and the *Local Government Act 1999*.

Decision is a formal decision of Council, a decision of an employee of Council made under delegation or decisions of other people acting on behalf of Council.

Employee includes a person employed directly by the Council in a full time, part time or casual capacity (whether that position is permanent or contractual) and persons providing services to, or on behalf of, the Council even though they may be employed by another party.

Frivolous complaint refers to a complaint or request that lacks substance or merit or is otherwise trivial in nature.

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

Roxby Council refers to the Municipal Council of Roxby Downs established under the *Roxby Downs (Indenture Ratification) Act 1982* and the *Local Government Act 1999*.

Vexatious Complaint refers to a complaint or request is a complaint or request that is made to harass, annoy, delay or cause detriment or trouble to the Council or a third party. A complaint may be considered vexatious if:

- it comprises false allegations, and cannot possibly succeed; or
- there is an absence of any reasonable grounds for lodging the complaint; or
- the complainant does not have sufficient interest in the matters the subject of the complaint.

4. SCOPE

4.1. What is an Internal Review of a Council Decision?

An internal review of a council decision is undertaken when informal complaint processes have been exhausted. An internal review evaluates the process undertaken by Council in reaching its decision, particularly as to whether the decision made by the Council was:

- a reasonable decision to make in the circumstances;
- a decision open to be made on the facts before it; and
- a decision made in the public interest.

The review will also establish if the decision-making process was flawed in any manner.

4.2. What is a Decision of Council?

A decision of Council includes decisions made by:

- Council;
- employees of Council; and/or
- other persons acting on behalf of Council (such as contractors).

A decision is deemed to be made when a conclusion or resolution is reached after consideration of a matter, issue or query.

4.3. Application of Policy and Procedures

Council also has policies and processes in place for dealing with customer complaints and requests for service. As a general rule, Council will encourage the use of these policies and procedures in the first instance as they offer the potential for more immediate informal resolution.

This policy will apply where a complaint or request for service has not been resolved satisfactorily under Council's Dispute Resolution Procedure.

4.4. Matters Outside the Scope of the Policy and Procedures

This policy does not apply to matters covered by legislation that have prescribed appeal procedures including:

- *Planning, Development and Infrastructure Act 2016*
- *Freedom of Information Act 1991*

- *Ombudsman Act 1972*
- *Local Government Act 1999* in respect to a section 255 Order
- *Expiations 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 officer
- Control Order under the *Dog and Cat Management Act 1995*
- A section 92 notice under the *South Australian Public Health Act 2011*

Matters that fall outside of the statutory appeals procedures in these pieces of legislation will be considered for the conduct of a section 270 review on a case-by-case basis on the merits of the individual application. The purpose of this is to fill the gaps in the law where a complainant has no right of review.

Council operates separate business units; Roxby Power (Electricity Supply) and Roxby Water (Water & Sewerage Services) under the *Roxby Downs (Indenture Ratification) Act 1982*. Each business unit has separate legislative standards that apply, and the Internal Review of Council Decisions Procedure may not necessarily be applicable.

This policy and associated procedure cannot replicate, override or operate inconsistently with statutory processes. Where legislation provides for the review of, or appeal from, a type of decision (or where legislation specifically excludes a type of decision from review either expressly or by necessary implication), a decision of that type will ordinarily not be reviewed under this procedure, however the Council will assess each application received on its individual merits.

It is also important to note that a review under this procedure could not vary or revoke a decision which has operative effect under legislation from the time the decision is made. For example, some development approvals under the *Planning, Development and Infrastructure Act 2016* are intended to have operative effect from the time the decision is made and are not capable of being varied or revoked by council.

5. MAKING AN APPLICATION

5.1. What can you expect from Council?

Council will acknowledge receipt of an application for a review within 3 business days. Council will aim to have the investigation completed, and a draft report prepared within a month.

It is recognised that some investigations are more complex and are unable to be completed within these timeframes. In these instances, Council will advise the applicant and provide estimated timeframes for the draft report to be completed.

Where a formal Internal Review is granted under this Policy the person conducting the internal review shall be independent from those involved in the initial decision. Applicants will be treated equally, in accordance with good administrative practice and Council's procedures are designed to ensure that:

- every applicant has the opportunity to make an application for review of a decision covered by this procedure;
- an unbiased assessment is undertaken;
- decisions are based on sound evidence;
- applicants receive information about the outcome of the review.

While Council prefers to resolve requests for review directly with its customers, it does not negate citizens' rights to seek an external review of a decision through the State Ombudsman, other legal appeal processes or the Courts at any time during the complaint handling process.

In the case where an application is refused, or a review has been finalised and the applicant is still unhappy with the decision, the Chief Executive Officer may recommend the case go to mediation,

conciliation, or neutral evaluation. Costs and expenses associated with the appointment and work of a mediator, conciliator or evaluator under this section will be shared equally between the council and the other party.

5.2. Process

A formal request for a review of a decision must:

- Be in writing
- Be addressed to the Chief Executive (or in the case where the matter is about a decision made by the Chief Executive, the matter will be referred to the Administrator)
- Provide full details of the decision for which the applicant is seeking a review (including how the decision impacts on their rights and/or interests) and set out the reasons for applying for a review
- All parties with an interest in the matter will have the opportunity of making written submissions expressing their point of view and responding to issues raised, including the provision of any relevant information
- Be lodged within six (6) months of the original decision being made (with discretion provided to the Chief Executive to allow a longer time limit to apply in particular cases. This will be assessed on a case-by-case basis)

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

The Chief Executive or the person assigned to consider a formal request for a review, pursuant to Section 270 (4) of the LG Act, may refuse to consider such an application if:

- The request is made by an employee of the Council and relates to an issue concerning the employee's employment
- It appears that the request is frivolous or vexatious
- The applicant does not have sufficient interest in the matter
- The decision was made more than 6 months ago
- The Chief Executive will formally acknowledge in writing all requests for a review of a decision of Council within 5 working days. The applicant will also be advised of the expected time frame within which a determination will be made in respect of their request for review. In most cases requests for review will be considered and determined within 20 business days. However, in some circumstances the review process may take longer and in this instance, the applicant will be advised.

The Administrator will deal with some requests for review. Those referred to the Administrator by the Chief Executive for consideration or reconsideration, are those regarding:

- Decisions made by the Council by formal resolutions
- Issues that in the opinion of the Chief Executive are likely to be of interest to the wider community
- Any other matters at the discretion of the Chief Executive

5.3. Assistance

It is essential that no-one is excluded from lodging an application for review because of any difficulties they may have representing themselves. All staff are expected to offer assistance where appropriate and provide it on request, including assistance in documenting the reasons for the review in writing when circumstances warrant. If necessary, access to interpreters, aids or advocates will be arranged to ensure that an applicant is treated equitably.

5.4. Confidentiality

The details of any request for review will be kept confidential in so far as it is practicable. When no longer practicable, the applicant will be advised. Where a request for review is referred to the Council

for determination, the Council may consider the matter in confidence where it is lawful and appropriate to do so, subject to one of the grounds under section 90(3) of the LG Act being satisfied.

5.5. Procedural Fairness and Natural Justice

Those that may be affected by a decision must be accorded procedural fairness, which includes the principles of natural justice. As part of the review process all parties with an interest in the matter will have the opportunity to make a written submission expressing their point of view and responding to issues raised, including the provision of any relevant information.

Procedural fairness involves:

- Giving an applicant a right to put his/her case forward. This will generally involve giving an applicant the opportunity to provide all relevant documentary evidence, rather than an oral hearing;
- Ensuring the reviewer does not have a personal interest in the outcome (is not biased); and
- Acting only on proper evidence that is capable of proving the case

6. HOW WILL A REQUEST FOR A REVIEW BE HANDLED?

6.1. The Review

In undertaking a review, the Chief Executive or Administrator will review the decision in question to ensure that the original decision maker complied with the following procedural requirements and made the best possible decision in the circumstances:

- The decision was within a power properly conferred on the decision-maker under the relevant Act
- The decision-maker considered all matters which were relevant to the making of the decision and did not take into account matters not relevant to the decision
- The decision-maker did not make a decision or exercise a power of discretion in bad faith or for any improper purpose
- The decision-maker ensured that findings of fact were based on evidence
- The decision was reasonable
- The decision-maker properly considered the application of existing policies
- The decision-maker did not exercise a discretionary power at the direction of another person

In carrying out a review of a decision, the reviewer will consider all the information and material that was before the original decision-maker and any additional relevant information or material provided by the applicant.

This means the reviewer will do more than simply consider whether the decision is legally and procedurally correct. The reviewer will also consider whether a different decision would be better, based on evidence. The process of merits review will typically involve a review of the facts that support a decision, including any new evidence that may come to light.

6.2. Outcome

The applicant will be informed in writing of the outcome of the review (even where a determination is made that the original decision under review is upheld)

6.3. Ombudsman

Pursuant to section 270(7) of the LG Act a formal request for review does not prevent a complaint being made to the Ombudsman at any time, including if the applicant is still dissatisfied with outcome of an internal review.

7. APPLICATIONS UNDER THIS POLICY RELATING TO RATES

In responding to any request relating to the impact that any declaration of rates or service charges may have had on ratepayers, Council is aware of its obligations under section 270 (2) (ca) of the LG Act. Accordingly, as part of the internal review process in these instances, the Administrator or the Chief Executive (as part of the review process) will consider the provision available to ratepayers for rate relief or concessions as set out in the LG Act. Council can also offer alternate payment arrangements in its endeavours to assist ratepayers to meet their rate debt.

8. ALTERNATIVE OPTIONS

Where all options for investigating a complaint have been followed and the complainant is not satisfied with the outcome, they may choose to take the matter to the Ombudsman at any time.

9. REPORTING ON INTERNAL REVIEWS

A register will be maintained of all requests for internal review received and the outcome of the applications. Adequate reasons will be recorded for all internal review determinations.

In accordance with section 270 (8) of the *Local Government Act 1999*, Council will also provide a report in each annual report on:

- The number of applications for review made under this section
- The kinds of matters to which the applications relate
- The outcome of applications under this section
- Such other matters as may be prescribed by the Regulations

10. REVIEW OF THE POLICY

To ensure that the principles of open Government are being applied in a proper manner it is anticipated that a review will be conducted at least every 5 (five) years.

11. ACCESSIBILITY

This policy is available to be downloaded free of charge from Council's website www.roxbydowns.sa.gov.au

Hard copies, for a fee, can be provided in accordance with Council's Fees and Charges, at the Council office at 6 Richardson Place, Roxby Downs, SA 5725.