



City of
Norwood
Payneham
& St Peters

NAME OF POLICY: Review of Decisions

POLICY MANUAL: Governance

INTRODUCTION

The City of Norwood Payneham & St Peters is committed to transparent decision making processes and to providing access to a fair, objective and consistent procedure for the internal review of decisions.

The purpose of this Policy and procedure is to provide clarity in terms of how the Council will deal with formal requests for internal reviews of Council decisions, (including decisions by its staff and other people acting on behalf of the Council).

The Review of Decisions Policy and Procedure is one component of the Council's citizen 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.

Grievances may arise as a result of dissatisfaction with a decision about a policy, procedure, service or fee. All attempts will be made to resolve grievances quickly and efficiently, without the need for formal applications for review to be lodged. Sometimes this cannot be achieved. The Procedure provides guidance for dealing with formal requests for internal review of decisions of the Council, its staff, and other people acting on behalf of Council.

Dealing with grievances at the local level is the most effective way of resolving matters quickly and effectively. Applicants for review of decisions will be encouraged to participate in the review handling process co-operatively. However, this will not negate citizens' rights to seek external reviews through the State Ombudsman, other legal appeal processes, or the Courts at any time during the internal review process.

THE LEGISLATIVE FRAMEWORK

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

The City of Norwood Payneham & St Peters Review of Decisions Policy and Procedure, has been prepared and adopted in accordance with the *Local Government Act 1999* (the Act).

Section 270(1) of the Act stipulates that a council must establish procedures for the review of decisions of:

- the Council;
- Employees of the Council; and
- other persons acting on behalf of the Council.

Section 270(2) stipulates that the Procedures must set out the following matters:

- the manner in which an application for a review may be made;
- assignment of a suitable person to reconsider a decision under a review;
- matters that must be referred to the council itself for consideration or further consideration;
- notification of the progress and outcome of an application for a review;
- timeframes within which notifications will be made and procedures on a review will be completed; and
- in the case of applications relating to the impact that any declaration of rates or service charges may have had on ratepayers, to ensure that these applications can be dealt with promptly and, if appropriate, addressed through the provision of relief or concessions under the Act.

Section 270(8) states that a council must, on an annual basis, initiate and consider a report that relates to:

- 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; and such other matters as may be prescribed by the regulations.

The information as set out above is considered by the Council as part of its Annual Report each year.

DEFINITIONS

For the purposes of this Policy and Procedure the following definitions apply:

Act – *Local Government Act 1999*.

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

Chief Executive Officer - the Chief Executive Officer (including their delegate) of the City of Norwood Payneham & St Peters

The Applicant - a person who lodges a request for the review of a decision.

Merits Review - a process by which a person or body, other than the primary decision-maker, reconsiders the facts, law and policy aspects of the original decision and determines the correct or preferable decision.

Process Review - a review of the correctness of the procedures followed in making a decision.

POLICY

The Council (including Committees, Council staff and people acting on behalf of Council) make decisions every day which impact on members of the community. The aim of this Policy is to ensure a fair, consistent and structured review process for any party dissatisfied with a Council decision.

An internal review of a Council decision is set out under Section 270(1) of the Act. This is a procedure that enables a Council to reconsider the decision-making process and all the evidence relied on to make a decision, including new evidence if relevant.

This Policy does not and is not intended to exclude other rights and remedies which are available at law.

An internal review of a Council decision will examine the correctness of the procedures which have been followed in making the decision and may also examine the merits of the decision itself.

The Council also has processes in place for dealing with complaints and requests for service. The Council will encourage the use of these processes in the first instance, as they offer the potential for more immediate informal resolution. Complaints about the actions of the Council, employees of the Council, or other persons acting on behalf of the Council, will attempt to be resolved under the Council's Complaints Policy.

Reasonable requests for the provision of a service by the Council or for an improvement of a service provided by the Council, are dealt with under the Requests for Services Policy.

The formal internal review of a Council decision process is generally a last resort in the complaint handling process, but may also be used in situations which are not able to be resolved by other means. While the Council encourages the use of other resolution mechanisms, it is an applicant's right to use the formal internal review process in the first instance if that is their preference.

Pursuant to Section 270(7) of the Act, a formal request for a review does not prevent a complaint being made to the Ombudsman SA at any time. However, as a general rule, the Ombudsman SA prefers that matters be addressed by the Council in the first instance.

MATTERS OUTSIDE THE SCOPE OF THE POLICY & PROCEDURE

Some Council decisions fall outside the scope of this Policy and Procedure, as an alternative statutory process for a review or appeal may exist in other legislation. Other legislation which contains statutory review processes includes the following:

- *Development Act 1993* and appeals to the Environment, Resources and Development Court;
- *Freedom of Information Act 1991*; and
- *Expiation of Offences Act 1996*.

Applicants wanting a review of a Council decision should determine if any other statute applies to their matter before proceeding with an application for a review. However, matters that fall outside other legislative processes will be considered for a Section 270 review on a case-by-case basis, depending on the merits of the individual application.

WHO CAN LODGE A REQUEST FOR A REVIEW OF A DECISION?

Any person who is affected by a decision/s made by the Council, may lodge a request for an internal review of a Council decision. For example, residents, ratepayers, members of a community group, users of Council facilities and visitors to the City, all have the right to lodge an application for review.

PROCEDURE

The procedure which will apply to any request for a review of a decision of the Council, is set out below.

Making an Application

The review of a Council decision commences at the point where a formal request for a review of a Council decision is received.

A formal request for a review of a decision must:

- be in writing and addressed to the Chief Executive Officer (or in the case where the matter is about a decision made by the Chief Executive Officer, the matter will be referred to a General Manager of the Council);

- 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 clearly the reasons for applying for the review; and
- be lodged within three (3) months of the original decision being made (with discretion provided to the Chief Executive Officer 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.

Assistance will be provided to applicants, where necessary, including the use of an interpreter, providing assistance for people with a disability, or referring applicants to an advocate to help prepare a written application.

The Council undertakes to maintain confidentiality as far as is possible and only relevant parties will be involved. Applicants will be encouraged to observe confidentiality also, as this is likely to achieve the fairest result for all concerned.

Acknowledging an Application

The Chief Executive Officer will formally acknowledge in writing all requests for a review of a Council decision within five (5) working days of receiving the request and advise the applicant of the expected timeframe within which a determination will be made in respect of their request for review.

The Chief Executive Officer will consider all requests for a review and may refuse to assess such an application pursuant to Section 270(4) of the Act if:

- the request is made by an employee of the Council and relates to an issue concerning the employee's employment;
- the request is frivolous or vexatious; and/or
- the applicant does not have a sufficient interest in the matter - this will be determined on a case-by-case basis.

Undertaking the Review

Applicants will be treated equally, in accordance with good administrative practice. The 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 Policy and Procedure;
 - an unbiased assessment is undertaken;
 - reviews will be completed in a timely manner, while ensuring that they are dealt with at a level of authority that reflects the level of complexity of the issue;
 - decisions are based on sound evidence;
 - applicants receive information about the outcome of the review; and
 - applicants will be afforded procedural fairness.
- The Chief Executive Officer will assess all requests for a review of a Council decision (except those which will be referred directly to the Council) and determine what action, if any, should be taken (including whether an independent assessment is necessary).
 - The Chief Executive Officer may elect to appoint another staff member (an Internal Review Contact Officer) or an external advisor for assessment and/or preparation of a report to assist in the review process. The person appointed to assist with the review, must be independent of the original decision being reviewed (ie have no prior involvement in the matter). An external advisor may be engaged where the decision under review is complex and/or raises legal questions.
 - The Chief Executive Officer will refer a review of a Council decision directly to Council where the decision being reviewed was made by the Council or a Committee. A review of decisions made by the Chief Executive Officer will be referred to a General Manager.

- The types of requests for review of Council decisions that will be referred to the Council are those regarding:
 - decision/s made by resolution of the Council.
 - Council endorsed objectives and policies.
 - budgetary matters, or evaluation of service delivery matters.
 - Civic and ceremonial matters.
 - issues that are likely to be of interest to the wider community.
 - matters which may involve litigation.
 - recommendations to refuse to review a decision raised by an applicant on the grounds that it is frivolous or vexatious, or where the applicant does not have sufficient interest in the matter.
 - matters where legal procedures have not been followed, for example, relating to leases and licences and tenders.
 - the decision being reviewed relates to civic or ceremonial matters;
 - the decision being reviewed is, in the opinion of the Chief Executive Officer or the Internal Review Contact Officer, likely to be of interest to the wider community.
- Any other matter at the discretion of the Chief Executive Officer or the Internal Review Contact Officer.
- Where a review of a Council decision is referred to the Council, the Chief Executive Officer will prepare a report to the Council which will include all of the relevant information about the decision which is being reviewed.
- Where a request for review has been referred to the Council the applicant will be advised of the date that the report will be presented to Council and will be given the opportunity to provide a written or verbal submission in relation to the report for Council's consideration.
- In most cases, the Council will use its best endeavours to ensure that requests for review will be considered and determined within 20 business days. However, in more complex cases, or if the decision is to be reviewed by the Council, a Council Committee or an external provider, a review may take longer. In the event that a review exceeds 20 days, the applicant will be provided with periodic updates on the progress of the review until the review is finalised.
- Except where a decision has already been implemented and cannot be revoked, a merits review will be conducted. In those instances where a merit review will not be conducted, a process review will be undertaken and the applicant will be advised of this at the time the review is commenced.
- If applications for review are not resolved satisfactorily, applicants will be advised of other options for review, such as the State Ombudsman, legal advice and/or the Courts.

Procedural Fairness

- Persons and/or organisations which 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 any issues which are raised, including the provision of any relevant information.
- In undertaking a review, the Chief Executive Officer, the Internal Review Contact Officer or the Council, 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 having regard to the following:
 - the decision maker had the power to make the decision;
 - the decision maker considered all matters which were relevant to the making of the decision at the time and did not take into account matters which were not relevant, as well as any additional relevant information or material provided by the applicant;

- the decision maker did not exercise a discretion or power in bad faith, for an improper purpose, or while subject to duress or the influence of another person;
 - the decision maker had no conflict of interest, bias or perceived bias;
 - the decision maker ensured that findings of fact were based on evidence;
 - the decision was reasonable; and
 - the decision maker considered any relevant legislation, Council policies and/or procedures.
- The details of any request for a review will be kept confidential in so far as it is necessary and practicable for conducting an effective review process.
 - 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).
 - Adequate reasons will be recorded for all internal review determinations.

APPLICATIONS UNDER THIS POLICY RELATING TO RATES

This Procedure applies to applications that relate to the impact that any declaration of rates or service charges may have had on ratepayers.

The Council or the Chief Executive Officer will give priority to such applications and consider the impact of rates and services on ratepayers and the provisions available to ratepayers for rate relief or concessions as set out in the Act (eg remission or postponement of payment, issuing of fines and interest, particular land use categorisation).

The Council cannot review its decision relating to the setting and declaration of rates.

REMEDIES

Where the review of a decision upholds the applicant's grievance, an appropriate remedy of response will be determined that is consistent and fair for both the applicant and the Council.

The remedy chosen will be proportionate and appropriate to the outcome of the review and may include (but is not limited to) such things as:

- varying the original decision;
- returning the situation to its original status (such as not pursuing the construction of something, not implementing the original decision, etc);
- an explanation ;
- mediation;
- an apology or admission of fault;
- a change to Council policy procedure or practice;
- a correction of Council records.

Where appropriate, the findings of the internal review will be considered in regard to how the Council's existing practices can be improved.

OTHER REFERENCES

- City of Norwood Payneham & St Peters Complaints Policy

REVIEW PROCESS

The Council will review this Policy and Procedure within 24 months of the adoption date.

INFORMATION

The Internal Review Contact officer for further information at the City of Norwood Payneham & St Peters is the Council's General Manager, Governance & Community Affairs, Lisa Mara, telephone 8366 4549 or email lmara@npsp.sa.gov.au

ADOPTION OF THE PROCEDURE

This Policy was adopted by Council on 6 November 2000.

This Policy was reviewed by the Council on 7 May 2018.

TO BE REVIEWED

May 2020