

<b>Responsible Officer</b>	<b>Adopted</b>
Director of Corporate and Community Services	November 2019
<b>Local Government Act 1999 Reference</b>	<b>Reviewed</b>
s270 – Procedures for Review of Decisions and Requests for Services	<b>Next Review*</b>
	November 2021

## OBJECTIVE

The Renmark Paringa Council (“the Council”) is committed to transparent decision-making processes and to providing access to a fair and objective procedure for the internal review of Council decisions.

Grievances may arise as a result of dissatisfaction with a Council decision, policy, procedure, service or fee. All attempts will be made by the Council to resolve grievances quickly and efficiently and without the need for formal applications for review to be lodged.

In the event that a resolution cannot be reached, a grievance may be progressed in accordance with this Internal Review of Council Decisions Policy (“the Policy”). The Policy provides guidance to the Council for dealing with an internal review of a Council decision.

Applicants for review of decisions will be encouraged to participate in the review handling process cooperatively. The Policy an opportunity to review the way Council makes decisions and to identify areas for improvement.

The Policy does not negate the rights of a person aggrieved by a Council decision to seek external review through the State Ombudsman, other legal processes, or the Courts at any time.

The scope of this policy excludes issues which would relate to staffing matters covered under individual contracts.

## POLICY

Section 270 of the Act also requires the Council to establish procedures for the review of decisions of:

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

### What is an Internal Review of a Council Decision?

An internal review of a Council decision is undertaken when informal complaint processes (as detailed in the Customer Experience Policy) 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.

The review could lead to the original decision being affirmed, varied or overturned. Sometimes, the decision is unable to be changed; in this case Council will undertake the internal review to establish any opportunities for business improvement.

There is no cost to the applicant for an internal review.

### **What is a decision of Council?**

A decision of Council includes decisions made by:

- Council (that is the elected body);
- employees of Council; and/or
- other persons acting on behalf of Council (such as contractors).

### **What matters are not covered by this policy?**

Not all actions are considered decisions; for example, actions taken during the process of decision-making (ie investigations, requests for further information, internal consideration of the matter or referral of the matter to an external adviser) are not decisions. A decision is made when a matter, issue or query is actually determined.

Matters that have been referred to the Local Government Association Mutual Liability Scheme (LGAMLS) in respect to a claim or potential claim against the Council or in response to a threat of legal action against the Council, are not considered decisions of Council, and as such are not covered by this Policy, nor would the referral of a matter to Council's insurer the LGAMLS be a decision.

In addition some decisions made by Council are subject to review or appeal processes set out in other legislation (such as Planning, Development and Infrastructure Act 2016, Dog and Cat Management Act 1995, Freedom of Information Act 1991, Expiation of Offences Act 1996). This policy and associated procedure cannot replicate, override or operate inconsistently with these statutory processes.

Where legislation provides for the review of, or appeal from, a type of decision (or where legislation specifically excludes a type decision from review either expressly or by necessary implication); a decision of that type will not be reviewed under this procedure.

Similarly, 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 Development Act 1995 are intended to have operative effect from the time the decision is made and are not capable of being varied or revoked by Council.

Decisions made more than 6 months prior are also not covered by this policy or procedure.

Council is aware of its obligations under Section 270 of the Local Government Act 1999 in relation to applications relating to rates and in these instances Council will consider the provisions available to ratepayers for rate relief or concessions. The process for rate relief or concessions is detailed in the Rates Rebate Policy and the Rating Policy.

The Chief Executive Officer (CEO) may consider granting an Internal Review on the matters described above, where it is determined that there may be merit in doing so and provided it isn't contrary to other legislative avenues.

**When will a request for review be refused?**

Council, or a person assigned to consider the application, may refuse to consider an application for review if:

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

Refusing an application for review will not be done lightly and reasons for the refusal will be provided to the applicant.

**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.

**DEFINITIONS**

**Complainant;**

A customer who is dissatisfied with the service delivery of the Council or the handling of a Request for information.

**Frivolous complaint or Request;**

A complaint or request that lacks substance or merit, or is otherwise trivial in nature.

**Malicious complaint or request;**

A complaint or request that is motivated by improper, vicious, or mischievous purposes.

**Unreasonable complainant conduct;**

Any behaviour by a current or former complainant which, because of its nature or frequency, raises substantial health, safety, resource or equity issues for the parties to a complaint

**Vexatious Complaint;**

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

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## PURPOSE

Section 270 of the Local Government Act 1999 requires all Councils to establish procedures for the review of decisions of:

- Council ( that is the elected body)
- employees of Council
- other persons acting on behalf of Council (such as contractors)

This procedure has been developed to inform and assist those persons seeking a formal review of a decision under Section 270.

## PROCEDURE

### Principles

The Renmark Paringa Council is committed to transparent decision making processes and to provide access to a fair and objective procedure for the review of decisions.

Grievances may arise as a result of dissatisfaction with a Council decision, policy, procedure, service or fee. Efforts will always be made to resolve grievances quickly and efficiently, without the need for formal applications for review to be lodged.

Dealing with grievances at the local level is the most effective way of resolving such matters quickly. However, sometimes a simple resolution of a grievance cannot be achieved and a formal process is required.

### When Will the Procedure Apply?

This procedure will apply to matters that are not resolved satisfactorily outside of this procedure. A formal application for review of a decision will therefore initiate the procedure process. The person who lodges a formal application is referred as to “the applicant”.

The procedure will apply to all formal requests for review of decisions. A definition of what constitutes a reviewable decision is established in the Policy. The CEO may refuse a request on the grounds that it appears that the application is frivolous or vexatious or the applicant doesn’t have a sufficient interest in the matter.

A person who is not the direct subject of a decision may have a sufficient interest in the decision to seek a review under this procedure. For example, a person may have a sufficient interest in a Council decision regarding the number of dogs which may be kept within a neighbour’s property.

### **How is an Application Lodged?**

An application seeking the review of a decision must be submitted in writing and include:

- a statement clearly indicating which decision/s the applicant wishes to have reviewed;
- a statement outlining the reasons the review is requested; and
- any other relevant information.

Council assistance may be available to applicants in preparing a written application, where necessary, including the use of an interpreter, providing assistance with a disability or referring applicants to an advocate.

If the request is for a review of a decision made by the elected body, an employee or others acting on behalf of Council, the application should be addressed to the Chief Executive Officer, Renmark Paringa Council, PO Box 730 Renmark SA 5341 or via email [council@renmarkparinga.sa.gov.au](mailto:council@renmarkparinga.sa.gov.au) and marked to the attention of the Chief Executive Officer.

If the request is for a review of a decision made by the Chief Executive, the application should be marked "Personal" and addressed to The Mayor, Renmark Paringa Council, PO Box 730 Renmark SA 5341 or email to [council@charlesstut.sa.gov.au](mailto:council@charlesstut.sa.gov.au) and marked to the attention of the Mayor.

### **How Will An Application for Review Be Dealt With?**

The Chief Executive Officer (CEO) will determine the most appropriate officer (the "reviewing officer") to undertake the review after taking into account the information supplied and the level within the organization at which the decision was made. This will generally be a senior officer separate from those involved in the initial decision and may be an external independent person. Principles of natural justice will be observed in dealing with all applications.

Natural justice involves:

- giving an applicant a right to put their case forward. This will generally involve giving an applicant the opportunity to provide all relevant documentary evidence, rather than an oral hearing;
- ensuring that 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.

The reviewing officer will assess the application, determine the appropriate action and arrange for the determination to be communicated to the applicant. **Diagram 1** outlines the process for review.

Some matters may be referred to Council for consideration or reconsideration. These are:

- a request for review of a decision formally made by Council (ie a Council resolution);
- a request for an alteration to a formal Council Policy;
- a request for the review of a decision made by the Chief Executive which is not supported by Council Policy or clear procedural guidelines; and
- any other matters at the discretion of the CEO.

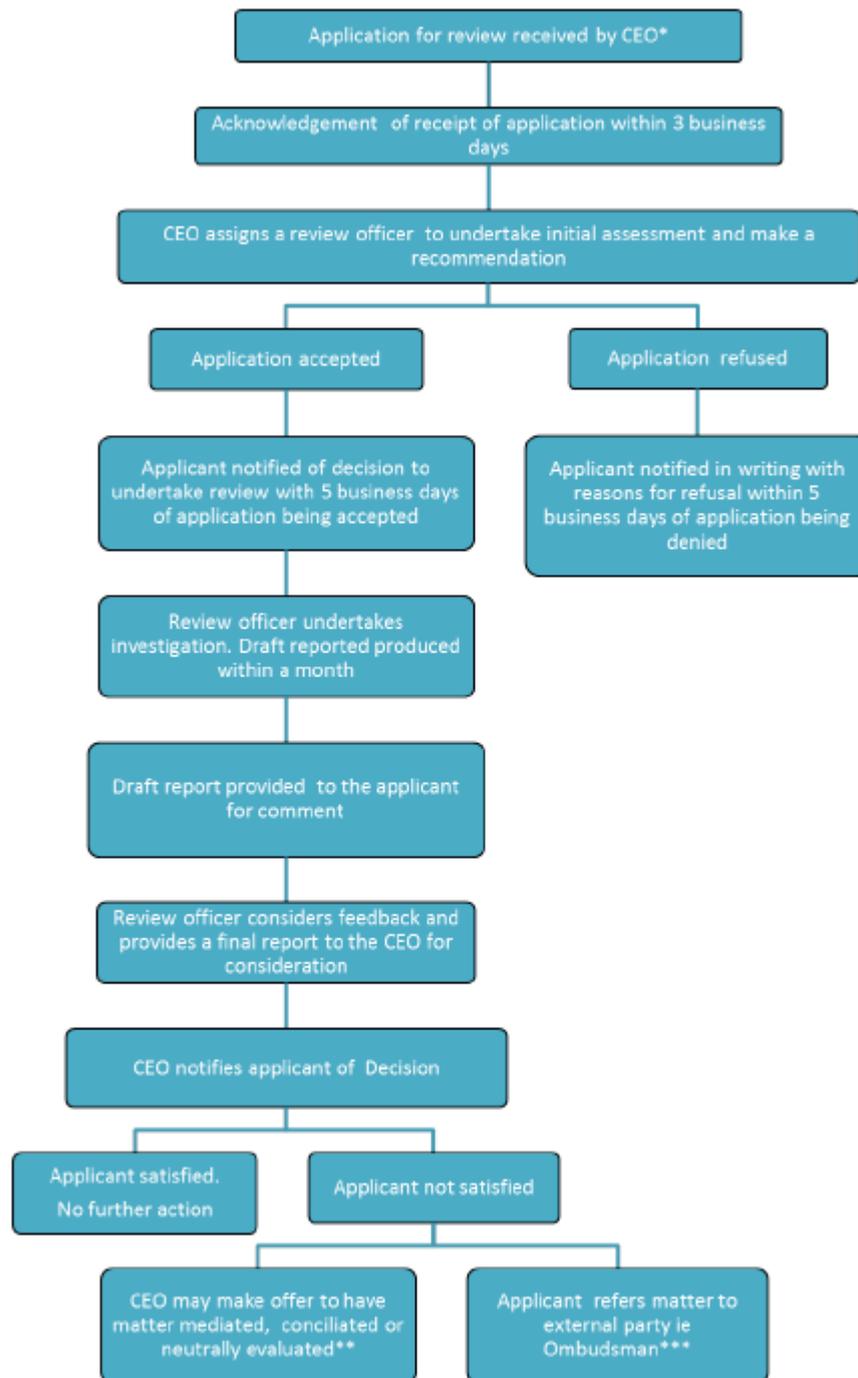
In these instances the process outlined in **Diagram 2** will apply

Council will **not** review or reconsider:

- decisions of Council in respect to the setting of Council rates; and
- decisions of Council that are clearly set out in the Renmark Paringa Council Annual Business Plan and Budget.



Diagram 1: Process for the review of decisions of Council staff, contractors and volunteers.



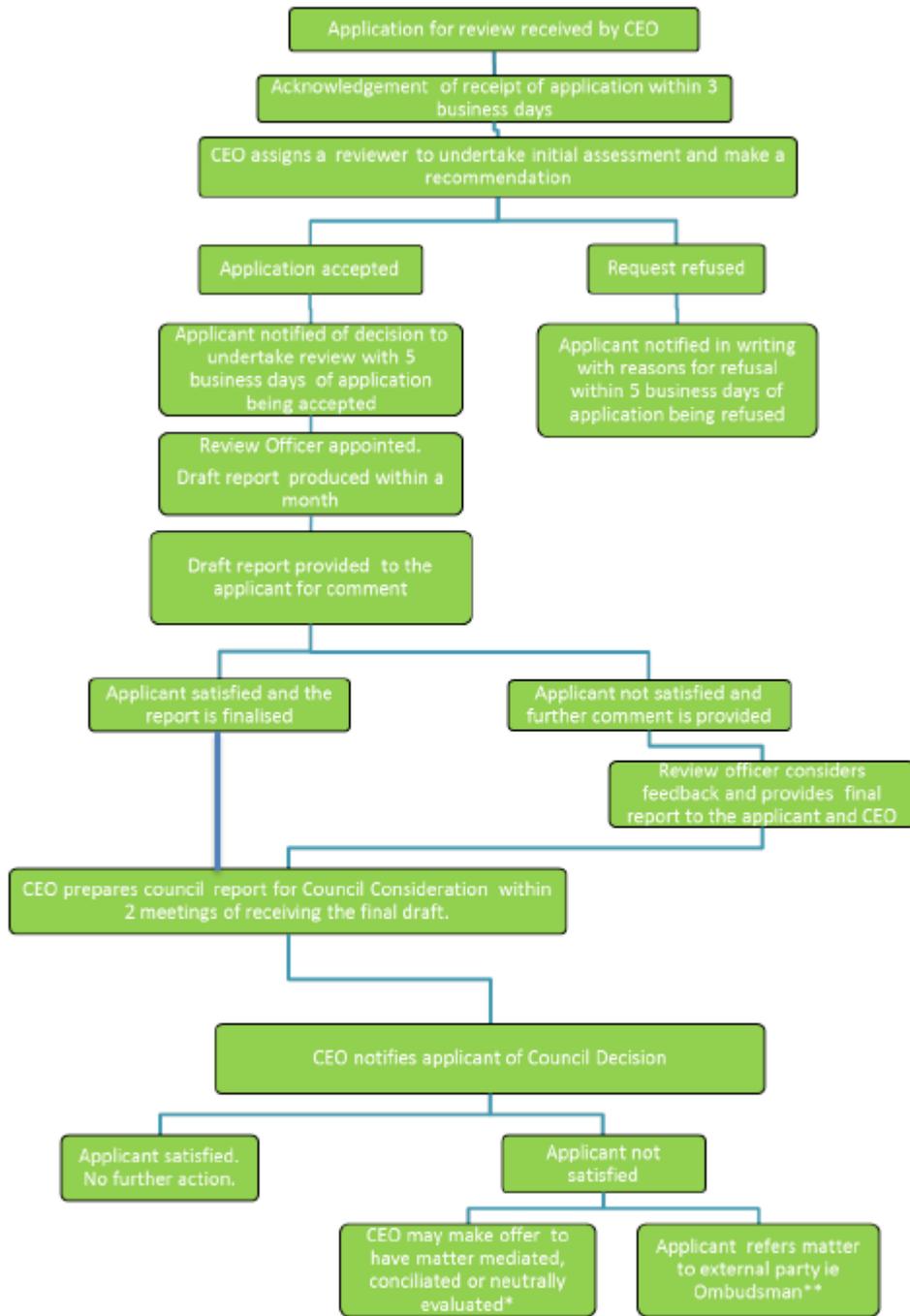
\* Where the CEO is the matter of the complaint complaints should be addressed to the Mayor.

\*\* The cost of mediated, conciliated or neutral evaluation will be shared by the applicant and Council

\*\*\* Nothing in this procedure limits a complainant's right to make a complaint with the Ombudsman's Office at any time.



Diagram 2: Process for the review of decisions by Council



\* The cost of mediated, conciliated or neutral evaluation will be shared by the applicant and Council

\*\* Nothing in this procedure limits a complainant's right to make a complaint with the Ombudsman's Office at any time.

### **How Long Will it Take for an Application for Review to be Assessed?**

Applications will be formally acknowledged within 3 business days of receipt, including advice about the expected time frame for dealing with the matter. In most cases applications will be considered and a draft report produced within a month. Applicants will be kept informed about the progress of the review and be advised in writing of the outcome of the review procedure.

Where a matter needs to be reconsidered by Council, it will be provided as an agenda item within 2 ordinary meetings of Council following the receipt of the report.

### **Meditation, Conciliation or Neutral Evaluation**

Where a review has been undertaken, and the applicant not satisfied, the CEO may recommend the case go to mediation, conciliation or neutral evaluation (as detailed in Section 271 of the Local Government Act, and included as Appendix A). 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.

### **Ombudsman**

Nothing in this procedure prevents an applicant from making a complaint to the Ombudsman under the Ombudsman's Act 1972 at any time during or after any of the steps of the process.

### **Further Information**

The Chief Executive Officer is Council's Contact Officer for advice about the Internal Review of Council Decisions and Requests for Services

For further information in relation to the Internal Review of Council decisions please contact Council's Chief Executive Officer, Renmark Paringa Council, PO Box 730 Renmark SA 5341

Email - [council@renmarkparinga.sa.gov.au](mailto:council@renmarkparinga.sa.gov.au).

Phone - (08) 8580 3000

Copies of the Procedure are available from the Community and Civic Centre or the Council's website at [www.renmarkparinga.sa.gov.au](http://www.renmarkparinga.sa.gov.au).

### **Records Management and Reporting**

A record of all requests for review and their outcome will be maintained by the Council in accordance with its record keeping obligations.

Pursuant to section 270(8) of the Act, the Council will, on an annual basis, consider a report that relates to-

- the number of applications for review of Council decisions made;
- the matters to which the applications relate;
- the outcome of the applications; and
- any other matters as may be prescribed by legislation from time to time.