

Review of Council Decisions Policy (including Handling Complaints)

Keywords: *Decision; Grievance; Complaints*

Corporate Plan:	<i>Links with goals, direction and intent of the Corporate Plan</i>
Classification:	<i>Executive Services – Statutory Policies – “Review of Council Decisions”</i>
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Review Frequency:	<i>Within 12 months of a General Election</i>
Last Reviewed:	<i>October 2023</i>
Next Review Due:	<i><u>Regulatory Requirement:</u> Within 12 months of the General Elections</i>
Responsible Officer(s):	<i>Chief Executive Office/Executive Assistant</i>
Council File Reference:	<i>Council Policies (P)</i>
Applicable Legislation:	<i>Section 270 Local Government Act, 1999</i>
Relevant Policies:	<i>Includes: Code of Conduct - Elected Members & Committee members; Code of Conduct - Council Employees; Confidentiality Provisions - Code of Practice; Procurement Policy (Contracting & Tendering) Unreasonable Complainant Policy</i>
Related Procedures:	<i>Public Consultation is not required prior to adoption</i>
Delegations:	<i>Berri Barmera Council Delegations Register</i>

1. Purpose

The Review of Council Decisions Policy (including handling of complaints) has been developed in accordance with the intent and requirements of Section 270 of the Local Government Act 1999.

The Policy provides a forum for the review of decisions made by:

- The Council
- Employees of the Council
- Other persons acting on behalf of the Council

This policy has been developed to inform and assist those persons seeking a formal review of decisions which adversely affect them.

2. Definitions

Request for Service	is an application to have Council or its representative take some form of action to provide a Council service
Council	means Berri Barmera Council
Feedback	can take the form of comments, both positive and negative, about services provided by Council without necessarily requiring a corrective action, change of services or formal

	<p>review of a decision. Feedback may, however, influence future service reviews and delivery methods.</p> <p>Where Council has failed to meet the normal standards for a service which has been, or should have been, delivered this policy and the associated procedures apply.</p>
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3. Principles / Scope

To outline the principles and procedures that the Berri Barmera Council will follow in addressing grievances as a result of decisions made by Council

A request to review a decision may be made where there are alternate forums for the review of such a decision (a court established specifically for that purpose (Development, Industrial), where the request is vexatious or where the person making the application has insufficient interest in the decision.

4. Internal Review of Council Decisions Framework

Berri Barmera Council is committed to transparent decision making processes and to providing access to a fair and objective procedure for the hearing or review of decisions.

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 review of decisions of Council, its employees, and other people acting on behalf of Council.

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 co-operatively. However, this will not negate citizens' rights to seek external review through the State Ombudsman, other legal appeal processes, or the Courts at any time during the complaint handling process.

5. The Local Government Act, 1999 ("the Act")

The Berri Barmera Council's Procedure for Review of Decisions has been adopted in accordance with Section 270 of the Local Government Act. 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.

6. Review of Decisions Timeframe

The applicant must apply within six (6) months for delegated decisions and within three (3) months for decisions made by the Full Council or the Strategy, Assets and Major Projects Committee, of which all Elected Members sit on. This includes applications for review of the impact of rates or services charges.

7. When will the Procedure apply?

Issues arise about a range of matters during the course of Council's day to day activities. Most grievances are initially made verbally by telephone, face-to-face to a Council officer, or some may be made in writing (both hard copy or via email) in the first instance. Sometimes Elected Members also receive grievances. Grievances will be referred to the relevant Council staff member in the first instance and prompt action generally results in the matter being resolved satisfactorily.

The procedure will apply to matters that are not resolved satisfactorily. A formal application or request for review of a decision will therefore initiate the procedure process. The person who lodges a formal grievance is referred to as the "applicant".

Some decisions made by the council, a council employee or on behalf of the council are subject to review or appeal processes set out in legislation. This procedure cannot override or operate inconsistently with these statutory processes. Consequently, where legislation provides for the review of, or appeal from, a type of decision, a decision of that type will not be reviewed under this procedure.

Examples include:

- objections to valuations made by the Council;
- appeals against orders made pursuant to section 254 of the Local Government Act;
- appeals against the issuing of litter abatement notices under the Local Nuisance and Litter Control Act 2016;
- appeals against destruction and control orders issued under the Dog and Cat Management Act 1995;
- review of an expiation notice under the Expiation of Offences Act 1996; and
- external review processes under the Development Act 1993 and the Freedom of Information Act 1991.

Where legislation specifically excludes a type decision from review either expressly or by necessary implication, this procedure cannot operate inconsistently with that legislation. 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 are intended to have operative effect from the time the decision is made and are not capable of being varied or revoked by council.

Where legislation specifically provides for an internal review process, that process will apply rather than the process set out in this procedure. For example, internal review of a determination under the Freedom of Information Act or withdrawal of an expiation notice issued by the Council under section 16 of the Expiation of Offences Act.

8. Who can lodge a request for a review of a decision?

Any person who is affected by the decisions made by council, may lodge a grievance. For example, residents, ratepayers, members of a community group, users of Council's facilities, and visitors to the area all have the right to lodge an application for review.

9. How can grievances be lodged?

Formal grievances are to be in writing to the Chief Executive Officer, providing full details about the grievance. 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. Confidentiality

will be maintained by Council, and only parties to the grievance will be involved. Applicants will be encouraged to observe confidentiality also, as this is likely to achieve the fairest result for all concerned.

10. How will grievances be dealt with?

Principles of natural justice will be observed in dealing with grievances. All parties will have the opportunity to express their point of view, provide relevant information, and respond to issues raised. Council has nominated the Chief Executive Officer as the responsible officer for dealing with grievances. The CEO will assess grievances, determine the appropriate action, and arrange for independent investigation if necessary.

Some matters will be referred directly to Council for consideration or re-consideration. The types of grievances that will be referred to Council are those regarding:

- council endorsed objectives and policies;
- council review of budgetary matters, or evaluation of service delivery matters;
- civic and ceremonial matters;
- the procedure of Review of Decisions or process;
- issues that are likely to be of interest to the wider community;
- 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 a sufficient interest in the matter;
- any other matters at the discretion of the Chief Executive Officer.

Autonomy has been given to the Chief Executive Officer to make a judgement about the severity of complaints regarding the above matters, so as not to hold up Council meeting time on matters that are minor, albeit addressing some of the issues above.

11. Decision Required

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Matters may also be dealt with through independent mediation or neutral evaluation, where the associated costs will be shared equally between Council and the applicant. The Chief Executive Officer will discuss this option with applicants where relevant.

13. How long will it take for grievances to be assessed?

14.

Grievances will be formally acknowledged within 7 days of receipt, including advice to applicants about the expected timeframe for dealing with the matter. In most cases applicants for review will be considered within 21 days, although in some circumstances it may take longer. However, in all cases, applicants will be kept informed about the progress of the review and advised in writing of the outcome of the review procedure and process. 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.

The Council is entitled under the Local Government Act to 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;
- it appears that the application is frivolous or vexatious; or
- the applicant does not have a sufficient interest in the matter;

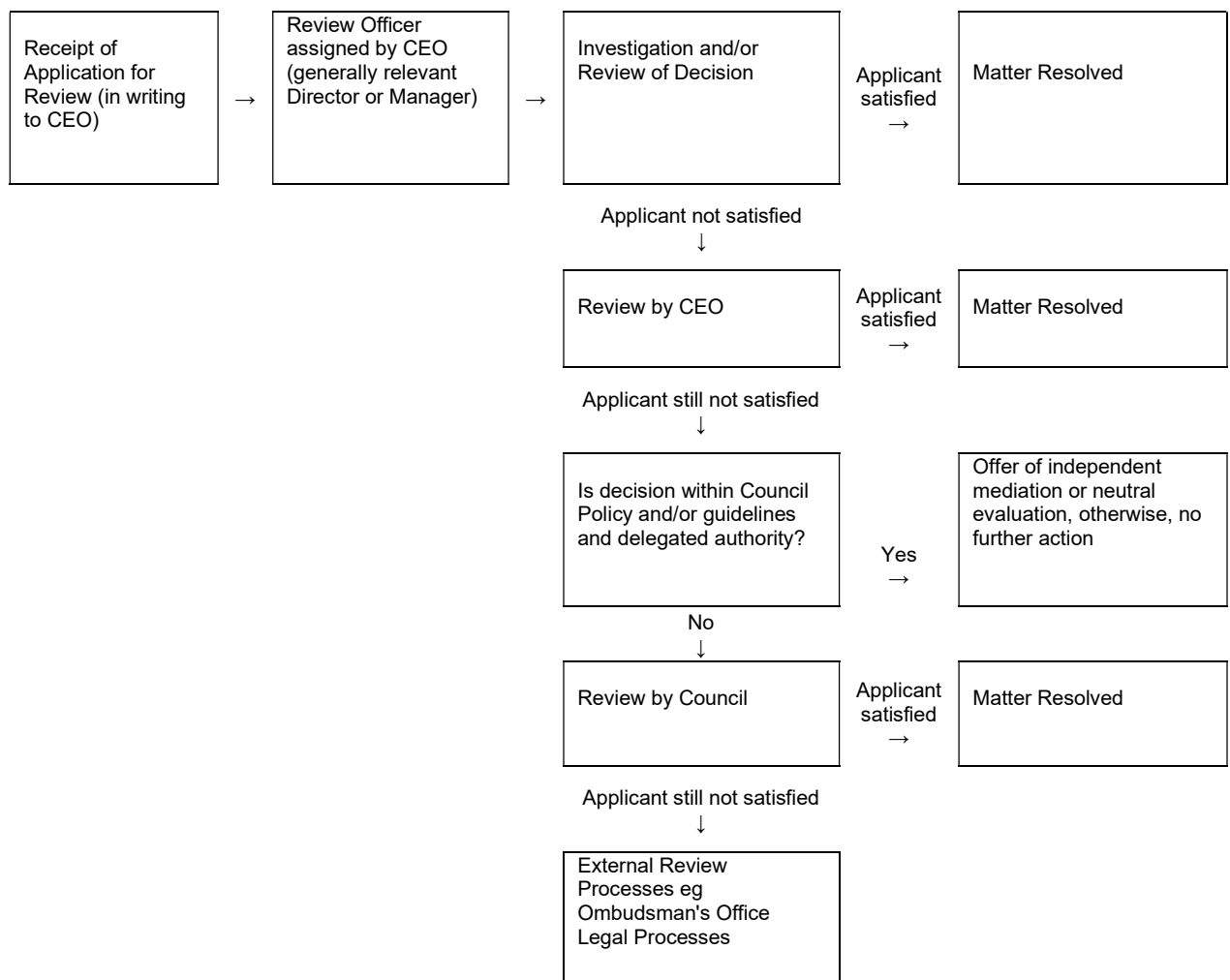
- the council or person (as the case requires) is satisfied that the subject matter of the application has been or is already the subject of a review by the council or an investigation, inquiry or review by another authority;
- where a matter has been referred to the Local Government Association Mutual 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, an application for review of a decision in connection with that claim or action (including the decision to refer the matter to the LGAMLS) will be vexatious.

15. Applications for a review of the impact of rates or services charges

If Council receives an application for a review of a decision concerning the financial impact of Council rates or services charges, these will be dealt with as a matter of priority. Where circumstances warrant, Council will consider financial relief or the granting of concessions in line with the provisions of the *Local Government Act 1999*.

16. The process adopted

The following diagram demonstrates the process to be adopted by Council for the review of decisions.



17. Review

All complaints will be treated seriously and at the time of review, consideration will be given to complaints received to ascertain relevance towards improving Council's processes and Customer Service.

18. Providing reasons

While there is no statutory requirement to give reasons for a decision, council will always give reasons to explain the outcome where:

- a decision is not in accordance with a Council policy;
- a decision is likely to detrimentally affect rights or interests of individuals (or organisations) in a material way; or
- conditions are attached to any approval, consent, permit, licence or other authorisation.

19. Outcome of review

Where the reviewer is the elected Council, the elected Council should determine whether to affirm, vary or revoke the original decision.

Where the reviewer is a Council employee, the employee may determine whether to affirm, vary or revoke the original decision if authority to make the decision has been delegated to that employee. If the reviewer does not have a delegation enabling the making of the decision, then the reviewer should report the outcome of the review to the elected Council (or delegate) for a determination as to whether the decision should be affirmed, varied or revoked.

Where the reviewer is an external person or body then the reviewer should report the outcome of the review to the elected Council for a determination as to whether the decision should be affirmed, varied or revoked. An external reviewer cannot vary or revoke a decision made by or on behalf of Council.

20. Records management

All documents, notes, photographs and correspondence must be retained and stored in accordance with Council's Records Management protocols as required by section 125 of the Local Government Act.

All applications must be recorded in Council's records management system in such a way that the information can also be analysed for service improvement opportunities.

The Responsible Officer will submit a report to Council annually about section 270 applications for review of a decision, including:

- the number of applications for review made under this procedure;
- the types of matter to which the applications relate;
- the outcomes of applications under this procedure; and
- any other matters as may be prescribed by the regulations.

The Responsible Officer will also report on how the outcomes have been used to improve Council's customer service, policies, procedures and practices. This information, as specified in section 270(8), will be included in Council's Annual Report.

21. Further Information:

For further information about the procedure and other options for review, please contact the Chief Executive Officer, Berri Barmera Council, PO Box 229 Berri 5343, telephone

8582 1922 or email bbc@bbc.sa.gov.au. Copies of the Review of Council Decisions (including handling complaints) are available from the Council's principal office (19 Wilson Street Berri) at no charge.

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