

1. PURPOSE

The Barunga West Council is committed to transparent decision making processes and to providing access to a fair and objective procedure for the internal review of decisions.

Section 270(1) of the *Local Government Act 1999* requires Council to “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.”

This internal review procedure specifically addresses the manner in which requests for a review of a previous decision of Council will be dealt with, and provides a structured process for any party dissatisfied with a decision which has been made by Council or its agents.

This procedure for review of a decision commences at the point where a request for the review of a decisions is received in writing.

1.1 Key Principles

The procedure is 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.

The State Records Act 1997 governs the obligations and responsibilities of councils in relation to the management of official records.

This procedure provides the framework for the Council to effectively fulfill its obligations and statutory requirements under the State Records Act.

2. SCOPE

2.1 Application of procedures

This procedure will apply to requests for a review of decisions of Council. It applies to all Council staff who may be involved in receiving an application for review of a Council decision.

An internal review is the third tier in Council's complaints handling process. It will apply:

- when matters cannot be resolved satisfactorily
- when a decision has to be reviewed by the elected Council (See 7.1 Assignment of applications for review)

The person who lodges a formal request for internal review is referred to as the "applicant".

2.2 Matters outside the scope of the procedures

Other provisions in the *Local Government Act* prescribe appeal arrangements in certain circumstances. For example:

- objections to valuations made by a Council (section 169) and
- appeals against orders made pursuant to section 254 of the *Local Government Act*.

Other legislation that has its own prescribed appeal procedures, includes but is not limited to:

- the *Development Act 1993*
- the *Freedom of Information Act 1991*
- *Dog and Cat Management Act 1995*
- *Environmental Protection Act 1993*
- *Electoral Act 1985*
- *Expiation of Offences Act 1996*
- *Fair Work Act 1994*
- *Fire and Emergency Services Act 2005*
- *Food Act 2001*
- *Matters relating to HACCP service, where specific complaint/review mechanisms are identified.*

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 however that as a general rule, the Ombudsman prefers that matters be addressed by Council in the first instance, unless this is not appropriate in the circumstances.

2.3 Council's commitment

Council, its committees, staff and contractors make decisions every day which impact on members of the community. It is imperative that these decisions are fair, objective and subject to review.

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

This procedure will be widely accessible to ensure that customers are fully aware of their right to request the review of a decision and the process that will be followed.

Everyone will be treated equally, in accordance with good administrative practice. 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.

There is no application fee for a formal internal review under section 270(3) of the *Local Government Act 1999*.

3. DEFINITIONS

The Act means the *Local Government Act 1999*

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

Applicant is the party lodging the request for review. Examples include residents, ratepayers, members of a community group, 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.

Council refers to the Barunga West Council

Decision is a position adopted by Council or its employees. It will generally be a judgement reached after consideration of relevant information.

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 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.

A "**Vexatious request**" is any request;

(i) 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

(ii) is considered by the reviewing officer to be mischievous, without sufficient grounds or serving only to cause annoyance.

4. 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, and in compliance with the State Records Act 1997, in such a way that the information can also be analysed for service improvement opportunities.

5. CONFIDENTIALITY

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.

The applicant will be encouraged to observe confidentiality as this is likely to achieve the fairest result for all concerned.

The applicant's personal information will be used by the reviewing officer in relation to investigating and reviewing the application.

Only relevant parties will be involved in the internal review process.

Where a request for review is referred to the Elected Council for determination, the Council may consider the matter in confidence where it is lawful and appropriate to do so, subject to there being grounds under section 90(3) of the *Local Government Act 1999*.

If the application is referred to the Ombudsman, the council will share any relevant information relating to the application with the Ombudsman's office in accordance with the *Ombudsman Act 1972*.

Information contained within the application may be accessible under the *Freedom of Information Act 1991*.

6. PROCEDURE

6.1 Making an application

An application for a review of a Council decision provides Council with an opportunity to revisit a decision which has aggrieved an interested party. This may include an individual or a 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.

An application for review must be in writing and signed by the applicant. It must set out a summary of the decision to be reviewed (that is, why the applicant believes that the decision is wrong). Although Council can be expected to possess information and material relevant to the matter under review, an application for review may also include new, relevant information or other attachments to support the application. An *Application Form* is available on Council's website.

6.2 Assisting with the application for review

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 with documenting the reasons for the review in writing when circumstances warrant.

If necessary arrange access to interpreters, aids or advocates to ensure that an applicant is treated equitably.

6.3 Internal Review Contact Officer

The Internal Review Contact Officer (IRCO) is the initial point of contact for applicants.

The Chief Executive Officer of the Council is the IRCO.

The role of the IRCO is to:

- explain the procedure to the applicant and explore any alternative options to resolve the matter, such as alternative dispute resolution prior to an application for review
- acknowledge the receipt of the application
- maintain a register of all applications for review received and the outcomes of the applications
- outline the timeframes involved and the action to be taken in the first instance (this may be in conjunction with any appropriately delegated officer)
- undertake a preliminary investigation to determine what actions have already been taken to try to resolve the matter
- keep the applicant informed of progress
- ensure adequate records are maintained
- report to Council at prescribed intervals on all applications lodged for review
- provide a final report at the conclusion of a process.

All applications are to be referred to the IRCO immediately, including meeting with the applicant or transferring a telephone call when contact is first made.

6.4 Acknowledging an application for review

Applications for a review of a decision must be responded to within ten [10] business days, acknowledging receipt and advising of the expected timeframe for dealing with the matter. The IRCO will endeavour to ensure that a review of the original decision will be completed within [21] business days. However if the decision is to be reviewed by Council, a committee, or an external panel there may be delays caused by meeting cycle timelines. In more complex cases, a review may take longer.

The applicant will be regularly informed of progress, either by email, letter or telephone.

If the applicant is not satisfied with the decision of the IRCO, then if necessary the matter will be referred to the Council.

6.5 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*.

It is important to note that section 270(9) of the Act provides as follows:

“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).”

7. UNDERTAKING A REVIEW

7.1 Assignment of applications for review

Matters to be referred direct to Council for consideration or reconsideration include:

- when the decision being reviewed was made by formal resolution of Council
- a decision or recommendation made by a Council Committee
- a decision made by the CEO
- when the decision relates to civic and ceremonial matters
- in other circumstances as determined by the CEO or resolution of the Council

The CEO or his/her delegate will prepare an initial report for Council. Council is responsible for determining who will undertake any further investigation and the preparation of any reports for Council consideration. (This may be the CEO, his/her delegate, or an expert party from outside the organisation.)

7.2 Role of reviewer

Where the CEO or his/her 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*.

In all other instances, the role of a reviewer is to review the decision in question to ensure that the decision-maker complied with the following procedural requirements and made the best possible decision in the circumstances:

- The decision must be within a power properly conferred on the decision-maker under the relevant Act.
- A decision-maker must consider all matters which are relevant to the making of the decision and not take into account matters which are not relevant to the decision.
- A decision-maker must not make a decision or exercise a power or discretion in bad faith or for an improper purpose.
- A decision-maker must ensure that findings of fact are based on evidence.
- Decisions must be reasonable.
- Those who may be affected by a decision must be accorded procedural fairness, which includes the principles of natural justice.
- A decision-maker must properly consider the application of any relevant legislation, existing policies or procedures.
- A decision-maker must not exercise a discretionary power at the direction of another person.

7.3 Review process

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.

The reviewer will also consider whether a different decision would be better, based on the evidence. The process of merits review, as described above, will typically involve a review of the facts that support a decision, including any new evidence that may come to light.

7.4 Procedural Fairness

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.

Put simply, 'procedural fairness' 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.

7.5 Giving Reasons

While there is no statutory requirement to give reasons for a decision, Council may provide reasons for the decision of the reviewer where practicable.

Council will aim to give reasons to explain the outcome where:

- A decision is not in accordance with published 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.

7.6 Refusing an application for review

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.

Elected Members, when exercising their statutory duties, may not use the grievance process provided under Sections 270(1) and 271 of the *Local Government Act 1999*.

To attempt to do so would be considered a vexatious request, as the *Local Government (Procedures at Meetings) Regulations 2013* provide Elected Members with the opportunity for a rescission motion to alter a decision of Council.

Refusing an application for review will not be done lightly and reasons for the refusal will document the evidence on which a refusal is based.

8. REMEDIES

Where the review of a decision upholds the applicant's grievance, an appropriate remedy or response will be determined which is consistent and fair for both Council and applicant. The remedy will be proportionate and appropriate to the matter.

As a general principle the applicant will, so far as possible, be put in the position he or she would have been in, had the decision not been made. This may mean changing a decision. Where circumstances are such that it is not possible to return to the original situation, or to rectify the outcome of the decision, it may only be possible to offer an apology.

The range of outcomes may include:

- an apology
- an explanation
- mediation, conciliation or neutral evaluation
- a change to policy, procedure or practice
- a correction of misleading records
- financial compensation, including a refund of any fees
- the waiving of a debt
- the remission of a penalty
- disciplinary action
- referral of a matter to an external agency for further investigation or prosecution.

If an apology is required it will be done promptly and the applicant advised that appropriate action will be taken to ensure the problem is not repeated.

Compensation will only be offered in cases where the loss or suffering is considered substantial. The Council itself and the CEO are only authorised to offer financial compensation and this will only occur after consultation with the Local Government Association Mutual Liability Scheme.

When advising an applicant of the outcome of a review, information will also be provided about alternative remedies, including any rights of appeal and the right to make a complaint to an external agency such as the SA Ombudsman.

9. REPORTING

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

The IRCO records the following information about all applications for review:

- a) the number of applications for review made
- b) the kinds of matters to which the applications relate
- c) the outcome of applications
- d) such other matters as may be prescribed by the regulations.

Annually, Council must consider a report in relation to these matters. This information, as specified in section 270(8) of the Act, must be included in Council's Annual Report.

The IRCO will also provide information on how the outcomes have been used to improve Council's customer service, policies, procedures and practices.

10. LEGISLATION, POLICIES AND PROCEDURES

Local Government Act, 1999, s270
Freedom of Information Act 1991
Independent Commissioner Against Corruption Act 2012
Ombudsman Act 1972
State Records Act 1997
Requests for Service Policy & Procedure
Complaints Policy
Complaints Handling Procedure
Fraud and Corruption Policy
Whistleblowers Policy

11. AVAILABILITY & GRIEVANCES

This procedure is available for inspection at the Council office at 11 Bay Street, Port Broughton during ordinary business hours.

It is also available for inspection, download or printing, free of charge, from Council's website www.barungawest.sa.gov.au

Any grievances in relation to this procedure or its application should be forwarded in writing addressed to the Chief Executive Officer, Barunga West Council, PO Box 3, Port Broughton SA 5522.

12. REVIEW

This Barunga West Procedure shall be reviewed by The Barunga West Council within (4) years of the issued date.

Date	Revision Number	Reason for Amendment
	01	Adopted by Council 13 th March 2001
February 2006	02	Adopted by Council
February 2007	03	Adopted by Council
June 2008	04	Adopted by Council
August 2011	05	Adopted by Council
August 2014	06	Application form created. Adopted by Council
12 th August 2014	07	Adopted by Council
9 th October 2018	08	Reviewed by Council