

Internal Review of Council Decisions (Section 270) Procedures

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Responsible Officer:	Director Corporate
Relevant Legislation:	Sections 270 and 271 <i>Local Government Act 1999</i> <i>Ombudsman Act 1972</i> <i>Independent Commission Against Corruption Act 2012 (ICAC Act)</i>
Related Policies:	Complaint Handling Policy Request for Service Policy

1. Introduction

The City of Burnside (“the Council”) is committed to transparent decision-making processes and to providing access to fair and objective procedures for the review of decisions of the Council, its employees and other persons acting on behalf of the Council.

2. Strategic Plan Desired Outcomes

Principles: 4. Governing with Integrity

Theme: Spans all Strategic Plan Themes

Goals: Spans all Strategic Plan Goals

Priorities: Spans all Strategic Plan Priorities

3. Our Approach

3.1 Regularly review, update and adopt leading governance, risk management and administrative practices.

3.2 Review services to ensure they meet community needs facilitating efficient and effective outcomes of the Strategic Community Plan.

4. Legislative Requirements

These Procedures for Review of Decisions (“these Procedures”) have been adopted in accordance with Sections 270 and 271 of the *Local Government Act 1999*. The Procedures provide further opportunity to review the way Council delivers services to the community, and to identify areas for improvement.

5. Policy

- 5.1 For the purpose of these Procedures:
- 5.1.1 **the Act** means the *Local Government Act 1999*;
 - 5.1.2 The term **decision** refers to a decision of the Council, a decision of employees of the Council or a decision of other persons acting on behalf of the Council.
 - 5.1.3 The term **Applicant** means any person who applies for review of a decision.
 - 5.1.4 The term **application for review** means any application for review of a decision.
 - 5.1.5 The term **CEO** means the Chief Executive Officer of the City of Burnside.
- 5.2 An Applicant who is dissatisfied with a Council decision about a policy, procedure, service or fee may apply for review of that decision. All reasonable attempts will be made to review a decision quickly and efficiently, without the need for formal processes to be applied. Where this cannot be achieved, these Procedures provide guidance for dealing with an application for review.
- 5.3 These Procedures will not apply in circumstances where alternative statutory processes are available to review or challenge a decision under particular legislation (for example a decision made under the *Development Act 1993* in relation to a development application).
- 5.4 It is important to differentiate between an issue arising in relation to an operational matter or the way in which a Council service is provided, and an issue which arises from a decision on access to a service, its method of delivery, or the application of regulatory powers. These Procedures only provide for the review of a decision.
- 5.5 The Procedures will assist the Council to examine the process by which the original decision was made. The review may or may not result in the disputed decision being reconsidered or overturned.
- 5.6 Nothing in these Procedures prevents an Applicant from making a complaint to the Ombudsman at any time under the *Ombudsman Act 1972* or *ICAC Act 2012*.

6. When will these Procedures apply?

- 6.1 These Procedures will apply to any written request made by an Applicant for the review of a decision, except where:
- 6.1.1 it would be inappropriate to apply these Procedures on the basis that alternate specific procedures are prescribed and available to the Applicant in other relevant legislation. (See Appendix for a list of examples); or
 - 6.1.2 the decision was made under relevant legislation that intended to “cover the field” with respect to the rights to review or challenge regarding decisions under that legislation generally, notwithstanding that the legislation may not make available to the Applicant a right to review or challenge that subject decision in particular. (See Appendix for a list of examples.)

7. Complaints

- 7.1 A more generalised and less formal process for dealing with complaints, as distinct from reviews of Council decisions, is incorporated in the City of Burnside “Complaint Handling Policy and Complaints and Compliments Procedure”.

8. Who can lodge a Request for a Review of a Decision?

- 8.1 Any person who is affected by a decision may apply for review of the decision. For example, residents, ratepayers, members of a community group, users of the Council’s facilities, and visitors to the area all have the right to apply for review.

9. How to Apply for Review

- 9.1 Any application for review of a decision must be made in writing and addressed to the Council’s CEO.
- 9.2 Applications for review must specifically request an internal review and must provide the full details of the specific decision that the applicant wants reviewed (including, where possible, the date of the decision and details of the person or body which made the decision) which is the subject of the application for review together with the reasons for the making of the application for review and any information relevant to the application for review. The Applicant’s name and contact details, including street and postal address, must also be provided.
- 9.3 Upon receiving the written application for review Council will acknowledge receipt. The CEO will consider whether the application is sufficiently clear to enable the identification of the specific decision which is to be reviewed and to enable a review to take place. If the application is not sufficiently clear the CEO will request an applicant to provide clarification to enable the identification of the specific decision which is to be reviewed and to enable a review to take place. Council will not commence a review until such time as the required clarification is provided, to the reasonable satisfaction of the CEO.
- 9.4 Assistance will be provided to an Applicant where necessary, including the use of an interpreter, the provision of assistance for any Applicant with a disability, or the referral of an Applicant to an advocate to help prepare a written application for review.
- 9.5 Whilst all applications for review must be addressed to the CEO, the CEO and all General Managers of the Council will act as Contact Officers to provide general advice and information to the public upon request in relation to these Procedures.
- 9.6 The application for review must be received by the CEO within six (6) calendar months after the date upon which the decision the subject of the application was made.
- 9.7 The CEO has an absolute discretion to accept an application after the timeframe outlined in paragraph 9.6 and may take into account the following non-exhaustive list of considerations in determining whether to grant or refuse such an extension to the Applicant:
- 9.7.1 the length of the delay;
 - 9.7.2 the reason for the delay;
 - 9.7.3 whether the applicant has reasonable prospects of success;

- 9.7.4 the extent to which prejudice will be suffered by another party; and
- 9.7.5 public safety.
- 9.8 The CEO may request reasonable further information from the Applicant to inform the CEO, so a determination can be made under paragraph 9.7. That request should set a reasonable timeframe for the provision of the further information to the CEO.
- 9.9 If the Applicant does not provide to the CEO, within the stated timeframe, that further information requested under paragraph 9.8 the CEO may proceed to determine the extension decision in accordance with paragraph 9.7 and paragraph 9.10.
- 9.10 The CEO must provide to the Applicant written notification of any determination of the CEO under paragraph 9.7 as soon as reasonably practicable. That notification should clearly state the reasons for the CEO's determination.
- 9.11 The Council (or CEO acting on its behalf) may refuse to consider an application for review if:
 - 9.11.1 the application for review is made by an employee of the Council and relates to an issue concerning his or her employment; or
 - 9.11.2 it appears that the application for review is frivolous or vexatious; or
 - 9.11.3 the Applicant does not have a sufficient interest in the matter; or
 - 9.11.4 the 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.
 - 9.11.5 the application has already been the subject of a review by the council or "*an investigation inquiry or review by another authority*" in accordance with section 270(4) of the Act.

10. How Will an Application for Review be dealt with?

- 10.1 Procedural fairness will be observed in dealing with an application for review. All parties will have the opportunity to express their point of view in relation to the decision under review, provide relevant information in relation to the decision under review and respond to issues raised in relation to the relevant decision which is the subject of the application for review.
- 10.2 Council has nominated the CEO or delegate as the Officer responsible for dealing with any application for review.
- 10.3 The CEO or delegate will assess the application for review, determine the appropriate action, and arrange for the Applicant to be advised of the outcome of the application for review.
- 10.4 The CEO or delegate may determine that it is appropriate to request an independent person or organisation to review the application and prepare a report and recommendation(s) in relation to the application to assist in the consideration, reconsideration or further consideration of the decision under review by the CEO or delegate or by the Council.

- 10.5 The CEO or delegate may reconsider a decision under review or the application for review may be referred by the CEO or delegate to:
 - 10.5.1 the relevant General Manager to reconsider a decision under review; or
 - 10.5.2 a senior Council officer independent of the original decision to reconsider a decision under review; or
 - 10.5.3 the Council itself for consideration or further consideration.

11. Matters to be Referred to the Council Itself

- 11.1 Some matters will be referred to the Council itself for consideration or further consideration. The types of matters that will be referred to the Council itself include:
 - 11.1.1 a decision regarding Council endorsed objectives and policies;
 - 11.1.2 a decision made by resolution of Council;
 - 11.1.3 a decision in relation to Budgetary matters;
 - 11.1.4 a decision in relation to a recommendation for mediation, conciliation or neutral evaluation;
 - 11.1.5 a decision involving Civic and ceremonial matters; or
 - 11.1.6 any other matters at the discretion of the Chief Executive Officer
- 11.2 Council requires the CEO to make a judgment about the application for review and the nature of matters raised within it so as not to refer matters for consideration of Council, which, whilst falling into the above categories, are of a relatively minor nature, but instead would be referred to Council for information purposes only. However, where such a matter is likely to be of interest to the wider community, the CEO must consult with the Mayor or relevant Committee Chair before making such a judgment. Notwithstanding the requirements of 11.1 and 11.2, for information and reporting purposes, Council requires the CEO to inform Council, by way of an Information Document, appropriate correspondence or formal report (e.g. CEO Report), of all applications for review, upon receipt, together with the applications outcome at the conclusion of the review, following which the information and a summary of the outcome will be published on council's website.

12. Confidentiality

- 12.1 Council undertakes to maintain confidentiality as far as is possible subject to paragraph 12.3. and paragraph 16.2.5.
- 12.2 The Applicant will be encouraged to respect confidentiality as that is likely to achieve the fairest outcome for all parties.
- 12.3 However, the Applicant must be informed in advance if the application for review will be referred to Council, as the matter will then usually be in the public domain.

13. How Long will it take for an Application for Review to be Assessed?

- 13.1 Any application for review which meets the requirements of these Procedures will be acknowledged in writing within 5 days of receipt. At that time an Applicant will also be informed about the expected timeframe for dealing with the matter. In most cases an application for review will be considered within 21 days of receipt of the application, although in some circumstances it may take longer. The Applicant will be kept

informed about the progress of the review and will be advised in writing of the outcome of the review procedure.

13.2 Pursuant to Section 270(2)(ca) of the Act, where the application for review relates to the impact that any declaration of rates or service charges may have had on ratepayers, the Council will ensure the application for review is dealt with promptly and, the Applicant notified of the progress and outcome of an application for review.

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

“270(9) 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).”

13.4 If an application for review is not resolved satisfactorily, the Applicant will be advised of other available options for review, such as the State Ombudsman, 'ICAC Act', legal advice, and/or the courts or mediation, conciliation and neutral evaluation.

14. Disputes Between a Person and the Council

14.1 In the event that a dispute arises between a person and the Council it may be dealt with by mediation, conciliation or neutral evaluation provided that all parties to the dispute, including the Council itself, agree to such a process.

14.2 The Council will make provision for the constitution of panels of persons who are available to act as mediators, conciliators and evaluators from time to time.

14.3 Depending on the nature of the dispute, the CEO or delegate or the Council itself will be responsible for the selection of an appropriate mediator, conciliator or evaluator in the event that all parties agree to a mediation, conciliation or neutral evaluation.

14.4 Any mediation, conciliation or neutral evaluation must be dealt with in accordance with section 271 of the Act.

14.5 It is noted that nothing in Section 271 of the Act, including the process of mediation, conciliation or neutral evaluation, prevents a person from making a complaint to the Ombudsman at any time under the *Ombudsman Act 1972 or ICAC Act 2012*.

15. Record Keeping

15.1 The reviewing officer must keep written records of interviews and the process undertaken.

15.2 Records must be factual and objective.

15.3 Records must be securely stored and logged in Council's records management system.

15.4 Only those parties with a genuine need to view the material will be allowed access to the records.

16. Reporting

- 16.1 The Council will maintain a public register, published on its website, regarding all requests made under Section 270 of the Act. The public register will contain the:
 - 16.1.1 date of receipt of the request;
 - 16.1.2 topic (decision requested to be reviewed);
 - 16.1.3 details of the reviewer undertaking the review;
 - 16.1.4 status of the request (received/initial assessment/under investigation/finalised);
 - 16.1.5 outcome of the review, including publishing a summary of the outcome after Council / CEO consideration for public information;
 - 16.1.6 cost to council (staff time and cost of any external advice sought); and
 - 16.1.7 finalisation date (when the review was completed and presented to Council);
- 16.2 The Council will, on an annual basis consider a report that relates to:
 - 16.2.1 the number of applications for review made under this section;
 - 16.2.2 the kinds of matters to which the applications relate;
 - 16.2.3 the outcome of applications under this section;
 - 16.2.4 such other matters as may be prescribed by the Regulations under the Act; and
 - 16.2.5 the learning outcomes, relevant to administration practices and functional responsibilities, observed by Administration resulting from the reviews.

17. Costs

- 17.1 In accordance with Section 270(3) of the Act, the Council must charge the prescribed fee to a person who lodges an application for review.
- 17.2 In accordance with Section 271(7) of the Act, costs and expenses associated with the appointment and work of a mediator, conciliator or neutral evaluator will be shared equally between the council and the other party.

18. Further Information

- 18.1 Please refer to council website www.burnside.sa.gov.au for the City of Burnside's Contact Officers, i.e. CEO and General Managers who may be contacted for information and advice about the procedure for the Internal Review of Council Decisions.

19. Availability

- 19.1 The Procedure is available to be downloaded, free of charge, from Council's website www.burnside.sa.gov.au
- 19.2 The Procedure will be available for inspection without charge at the Civic Centre during ordinary business hours and a copy may be purchased at a fee as set annually by Council.

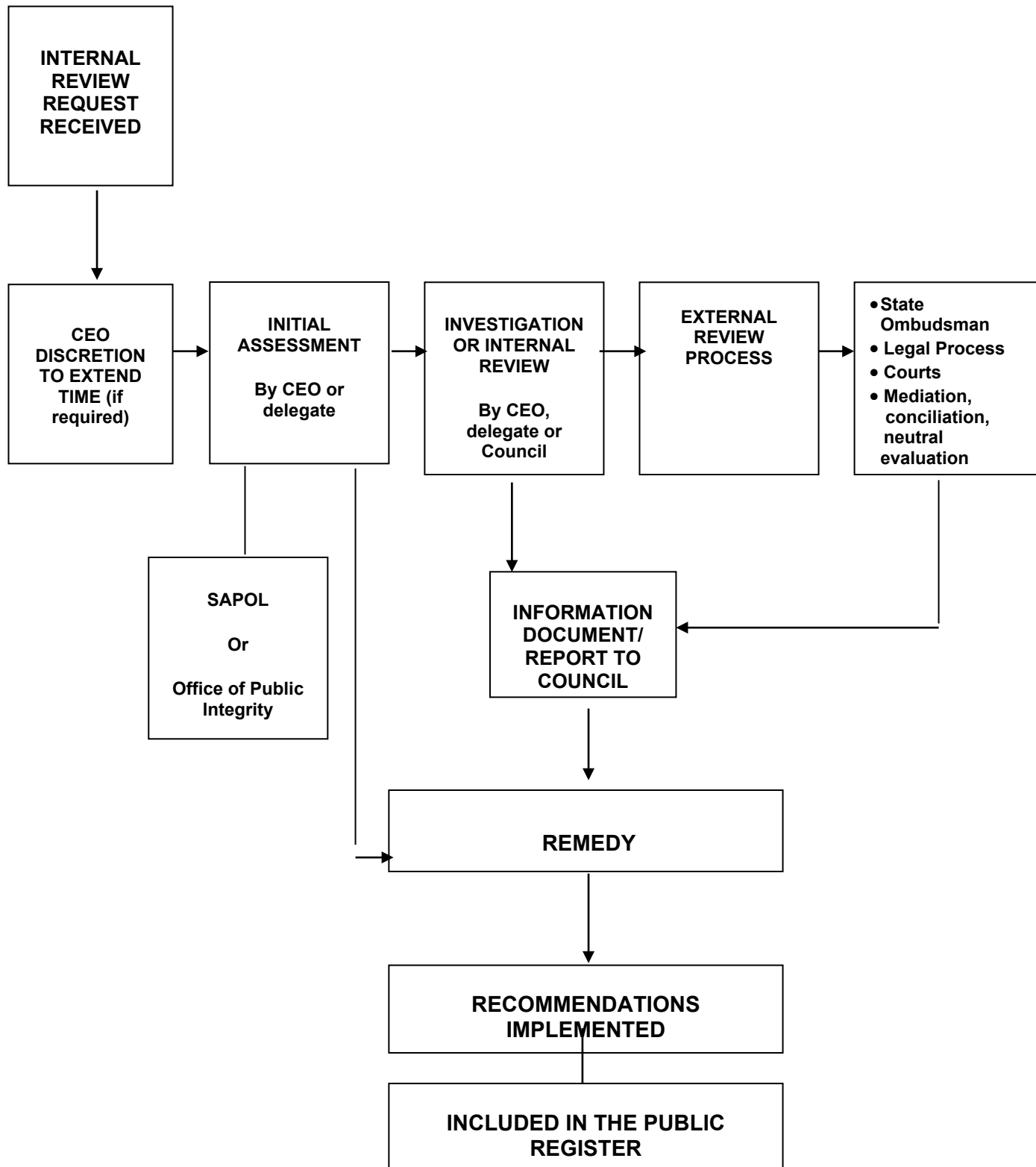
City of Burnside Civic Centre
401 Greenhill Road, Tusmore SA 5065
Telephone: 8366 4200

Email; burnside@burnside.sa.gov.au

Office hours: Monday to Friday, 8.30am to 5.00pm (except public holidays)

Internal Review Process

The following diagram demonstrates the process to be adopted by Council where a grievance results in a review of a decision.



Review Mechanisms

The following list provides examples of legislation which includes alternate, available review or complaint processes. The list is not exhaustive, and officers should check for other mechanisms which may be available to an Applicant

Development Act 1993

Planning, Development and Infrastructure Act 2016

District Court – Code of Conduct for Council Members 2013 – Elected Members

Electoral issues – *Local Government (Elections) Act 1999*

Electoral Signs – (state) *Electoral Act 1985*

Expiation of Offences Act 1996

Freedom of Information Act 1991

Government Business Enterprises (Competition) Act 1996

Independent Commission Against Corruption (ICAC) 2012

Local Government Act 1999

Ombudsman Act 1972

Valuation of Land Act 1971 – Valuer General

Decisions made through delegations under other Acts, such as:

Fire and Emergency Services Act 2005

Natural Resource Management Act 2004

Food Act 2001

Matters relating to Home and Community Care (HACC) services - *Aged Care Act 1997* incorporating the *Aged Care (Living Longer Living Better) Act 2013*

INTERNAL REVIEW RECORD - APPLICATION
In accordance with Section 270 of the Local Government Act 1999

Applicant's name:

Applicant's address:

Postal address: (if different)

Telephone: **Date of Application:**

Application received by:

Application referred to:

I request the following decision(s) be internally reviewed:

Assistance required by applicant:

Type: (eg Interpreter)

Details of person assisting:

Name: **Telephone:**

Applicant to arrange: Yes/No **Council to arrange:** Yes/No

Previous contact on same matter:

Name:

Date:

Result:

Degree of urgency: (ie Health or safety implications)

List of attached documents:

Signature of applicant: **Date:**

Signature of staff member: ...

Position: **Business Unit:**

**CITY OF BURNSIDE
FORM 2**

INTERNAL REVIEW RECORD - ASSESSMENT

Applicant:

CHECK LIST:

- (1). **Date of original decision:**
- (2). **Summary of decision:** .
- (3). **Staff involved in original decision making process:**
- (4). **Applicant's reasons for requesting a review:**
- (5). **Any relevant legislation: (Is this the correct review/appeal mechanism?):**
- (6). **Other persons/ parties affected by the decision:**
- (7) **Legal Advice received:**

FINDINGS:.....

ACTION:

- 1. **Resolved (give details):**
- 2. **Referred for further action to:**
- 3. **Referred to external review mechanism (specify which Legislation etc):**
- 4. **Referred to Council:**
- 5. **Referred to external mediator or neutral evaluation:**

Name: Telephone:

Organisation:

Address:

List of attached documents:

Applicant notified: By whom:.....**Date:**.....

Method: (eg letter, telephone)

Review Officer (print): Signature:

Position:

Date:

**CITY OF BURNSIDE
FORM 3**

INTERNAL REVIEW RECORD - RESOLUTION

Applicant:

OUTCOME:

1. **Resolved after initial assessment:**
 2. **Report received from officer to whom referred for further action on Form 2:**
 3. **Result of review under external review mechanism (ie. other legislation):**
 4. **Council resolution:**
 5. **Report received from external mediator/neutral evaluation:**
-

RECOMMENDATIONS:

1. **Original decision stands/overtaken/modified:**
 2. **Organisational response:**
 - (a) **Staff training required:**
 - (b) **Suggested changes to standard policies/processes/procedures:**
 - (c) **Other:**
 3. **Recommendations to be implemented by:**
 4. **Timeframe:**
-

Summary of costs:

Attach list showing amount and type (Court Fees, lawyers and mediators charges etc.)

Applicant notified:

By whom: Date:

Method: (eg letter, telephone)

List of attached documents:

Review Officer (print): Signature:

Position: Date:
