

Internal Review of Council Decisions

First Approved	July 2011
Review Frequency	4 yearly or as required
Status	LGA Mandatory
Last Reviewed	July 2015 (Resolution Ref: ACM15279) March 2020 (Resolution Ref: ACM20528 – Admin changes) 17 July 2023 (Resolution Ref: C23271)
Next Review Due	July 2027
File Number	18.63.001 / PL2023167
Responsible Division	Office of the CEO
Related Documents	Public Interest Disclosure Policy and Procedure Complaints Policy Complaints Handling Procedure Requests for Service Policy and Procedure Unreasonable Complaints Policy Review of Council Decision Form
Applicable Legislation	<i>Local Government Act 1999, sec.270</i> <i>Freedom of Information Act 1991</i> <i>Independent Commissioner Against Corruption Act 2012</i> <i>Ombudsman Act 1972</i> <i>State Records Act 1997</i>

1. Purpose

- 1.1 The purpose of this policy and procedure document is to provide guidelines for how Council will deal with formal requests for internal reviews of Council decisions (including decisions by its employees and other people acting on behalf of Council).
- 1.2 Alexandrina Council recognises the importance of transparency in Council decision-making and the need to provide a fair, objective and consistent process for the review of Council decisions
- 1.3 Alexandrina Council is committed to open, responsive and accountable government. This includes providing processes by which residents, constituents and rate-payers adversely affected by a decision of Council can have their dissatisfaction of a Council decision reviewed.

2. Definitions

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 1999*.

Applicant is the party lodging the requests 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, ie Monday to Friday, excluding public holidays.

Council refers to the Alexandrina Council.

Council Decision is a formal decision of the elected Council, a section 41 (*Local Government Act 1999*) Council Committee, a decision made under delegation by an employee of Council, or a decision by other persons acting on behalf of Council. 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.

Frivolous means a complaint which:

- Cannot be successfully argued because it is based on inaccurate facts, an error in law or outdated practices, or
- Has not reasonable prospect of success.

Prescribed Application Fee means the prescribed fee of \$20, as set in the *Local Government (Application for Review Fee) Notice 2021*, and applies to all section 270 applications for review of a council decision.

Reviewable Decision refers to the decision of which the review is sought.

Reviewer refers to the individual or entity responsible for resolution of a request for review of a decision.

Sufficient interest means an interest in the subject matter, over and above that of the general public. For a person to have sufficient interest, they must have been, or will be, personally affected by the decision under review or be a person (including an organisation) who can demonstrate some special interest in the subject matter.

Trivial means a complaint of little or no importance, where the Reviewer considers it unreasonable to dedicate resources to an investigation of the matter.

Unreasonable complainant conduct means any behaviour by a current or former complainant which, because of its nature or frequency, raises substantial health, safety, resources or equity issues for the parties to a complaint.

Vexatious request is any request from an applicant who has consistently, over a period of time, complained about minor matter or the same matter, which have previously been dealt with and no new information has been provided by the applicant and/or is considered by the reviewing officer to be mischievous, without sufficient grounds or serving only to cause annoyance.

3. Introduction

3.1 Section 270 of the *Local Government Act 1999* requires Council to maintain “policies, practices and procedures” for dealing with

- any reasonable request for the provision of a service by the council or for the improvement of a service provided by the council; and

complaints about the actions of the council, employees of the council, or other persons acting on behalf of the council.

- 3.2 An internal review of a Council decision will examine the correctness of the procedures followed in making the decision and, in accordance with this policy and procedure, may also examine the merits of the decision itself.
- 3.3 Internal reviews are an opportunity for the Council to review its own decision. While external help may be obtained to assist in a review, it is not an independent or external review process. External reviews of Council decision are in the remit of the Ombudsman.

4. Scope

- 4.1 This policy and procedure applies when reviewing decisions of Council as outlined below. Council also has defined procedures for dealing with complaints and requests for service. As a general rule, Council will promote these procedures in the first instance as they offer the potential for immediate resolution. An internal review is the third tier in Council's complaints handling process. It will apply when matters cannot be resolved satisfactorily and commence at the point where a valid request for the review of a decision is received together with payment of the prescribed fee.
- 4.2 this procedure is designed to ensure that:
- an unbiased assessment is undertaken
 - decisions are based on sound evidence
 - each applicant receives information about the outcome of the review
- 4.3 Some decisions of council have an alternate statutory process for a review or appeal in other legislation. Examples of other legislation containing statutory review or appeal processes include (but are not limited to):
- External review and appeal processes under the *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016*
 - External or internal reviews of decisions made under the *Freedom of Information Act 1991*
 - A decision to issue an expiation notice under the *Expiation of Offences Act 1996*
 - Reviews of orders made under section 254 of the *Local Government Act 1999*
 - Reviews of prohibition, destruction or control orders made under the *Dog and Cat Management Act 1995*
 - Appeals against litter or nuisance abatement notices under the *Local Nuisance and Litter Control Act 2016*
- 4.4 Applicants seeking a review of a council decision should check if a specific statutory appeal or review process applies to their matter before proceeding with an application.

5. Key Principles

- 5.1 The policy and procedure are based on five principles, which are fundamental in the way Council approaches requests for service, complaint handling and reviews of decisions. They are:
- 5.1.1 *Fair treatment*: which requires impartiality, confidentiality and transparency at all stages of the process

- 5.1.2 *Accessibility*: to be accessible there must be broad public awareness about Council's policies and procedures and a range of contact options
- 5.1.3 *Responsiveness*: this will be achieved by providing sufficient resources, well trained staff and ongoing review and improvement of the systems
- 5.1.4 *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
- 5.1.5 Integration of different areas of Council where the matter under review overlaps functional responsibilities.

6. Decisions subject to review

- 6.1 Decisions of the Council, employees and other persons acting on behalf of the Council, may be subject to review under this policy and procedure. The nature of this review is a merits review which could lead to the original decision being affirmed, varied or revoked.
- 6.2 Not all actions by Council, employees of Council or other persons acting on behalf of Council will be a decision and therefore this policy and procedure will be not applicable. 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. These can be reviewed in accordance with Council's Complaints Handling Procedure, including a Tier 1 review or Tier 2 Senior Officer review.
- 6.3 Council has a three-tier process for managing customer complaints, set out in council's *Complaints Handling Procedure*, which includes immediate, informal resolution as well as established processes for review by senior staff.
- 6.4 The formal internal review of a Council decision process is generally a last resort in the complaint handling process and may also be used in situations which are not able to be resolved by other means. While 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.
- 6.5 Pursuant to section 270(7) of the Act, a formal request for review does not prevent a complaint being made to the Ombudsman at any time. However, as a general rule, the Ombudsman prefers that matter be addressed by Council in the first instance.

7. Applications for Review of a Decision

- 7.1 A person with a sufficient interest in a decision of the Council, a council employee or a person acting on behalf of the council, may make a written applicant for a review of that decision 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.
- 7.2 The review of a Council decision commences at the point where a formal request for a review of a Council decision is received. Council staff can help an applicant determine whether to make a request under this policy and procedure or other statutory review

processes applicable to the matter at hand, but it remains a matter for the applicant to determine.

7.3 A formal request for a review of a decision must:

- 7.3.1 be in writing, ideally using the *Internal Review of Council Decisions Application* available on Council's website
- 7.3.2 be accompanied by the prescribed application fee
- 7.3.3 be addressed to the CEO (or in the case where the matter is about a decision made by the CEO, that matter will be referred to the Mayor for consideration by the elected Council and this policy and procedure be read accordingly)
- 7.3.4 provide full details of the decision for which the applicant is seeking a review (including how the decision impacts their rights and/or interests) and sets out clearly and succinctly the reasons for applying for the review
- 7.3.5 be lodged within six (6) months of the original decision being made (with discretion proved to the CEO to allow a longer time limit to apply in particular cases. This will be assessed on a case-by-case basis)

7.4 There is a fee of \$20.00 (prescribed under legislation) payable on application for a review of a Council decision. In practice, once an application is received, the applicant will be invoiced for the payment of the fee and consideration of the application will not proceed until the fee is paid.

7.5 Council may, in its absolute discretion, reduce, waive or refund (in whole or part) the prescribed fee under clause 7.4

7.6 No one should be excluded from lodging an application for review because of any difficulties they may have in representing themselves. Council staff will offer assistance where appropriate and provide it on request, including assistance in documenting the reasons for applying for the review in writing.

8. Acknowledging an application

8.1 The CEO will formally acknowledge all requests for a review of a Council decision within five (5) business days of receiving the request. This acknowledgement will confirm the application fee and advise the applicant of the expected timeframe within which a determination will be made in respect of their request for review.

8.2 The CEO will consider all requests for 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
- It appears that the request is frivolous or vexatious
- The applicant does not have a sufficient interest in the matter – this will be determined on a case by case basis.

8.3 The CEO may appoint another Council Officer ("reviewing officer") such as a member of the Executive Group or senior officer, who was independent of the original decision,

or set up a panel for the express purpose (ie it does not have permanent status) to conduct the review.

- 8.4 Where the CEO, Mayor, or reviewing officer has reasonable suspicion that the complaint involves corruption in public administration then the matter must be reported to the Office of Public Integrity (OPI) in accordance with the *Independent Commissioner Against Corruption Act 2012*.
- 8.5 Where the CEO, Mayor, or reviewing officer has information that the complaint involves maladministration or misconduct, then the CEO, Mayor, or reviewing officer may refer the complaint to the Ombudsman or seek guidance from the Ombudsman in accordance with the *Ombudsman Act 1972*.
- 8.6 The CEO may elect to appoint an external advisor for the assessment and/or preparation of a report to assist in the review process. An external advisor may be recommended where the decision under review is complex, raises legal questions or in circumstances where the resources required to undertake the review are not readily available within the organisation.
- 8.7 the CEO will refer a review of a Council decision to Council where the decision being reviewed was made by the elected Council or a Committee. A review of decisions made by the CEO may also be referred to the elected Council in certain circumstances. The CEO may also decide to refer a review of a Council decision to the elected Council where:
 - 8.7.1 the decision being reviewed relates to civic or ceremonial matters
 - 8.7.2 the decision being reviewed is in the opinion of the CEO likely to be of interest to the wider community
 - 8.7.3 the CEO otherwise considers, in their discretion that the matter warrants consideration by the Council.
- 8.8 Where a review of a Council decision is referred to the Council, the CEO will prepare a report to Council which will include all of the relevant information about the decision.

9. Undertaking the review

- 9.1 Applicants will be treated equally, in accordance with good administrative practice. Council's procedures are designed to ensure:
 - 9.1.1 every applicant has the opportunity to make an application for review of a decision covered by this policy and procedure
 - 9.1.2 an unbiased assessment is undertaken
 - 9.1.3 reviews will be completed as quickly as possible, while ensuring that they are dealt with at a level of authority that reflects their level of complexity
 - 9.1.4 decisions are based on sound evidence
 - 9.4.5 applicants receive information about the outcomes of the review
 - 9.4.6 applicants will be afforded procedural fairness

- 9.2 The CEO will determine the most appropriate officer (the 'reviewing officer') to undertake the review after taking into account the information supplied at the level within the organisation at which the decision was made as per 8.3
- 9.3 A reviewing officer may/will:
 - 9.3.1 explain the procedure to the applicant and explore what options are available to resolve the matter, such as alternative dispute resolution, before a formal application is lodged (where possible and appropriate)
 - 9.3.2 maintain a register of all applications for internal review lodged and the outcome
 - 9.3.3 acknowledge the receipt of the application (where this has not been done previously by the CEO)
 - 9.3.4 outline the timeframes involved and the action to be taken in the first instance
 - 9.3.5 undertake a preliminary investigation to determine what (if any) actions have already been taken to try to resolve the matter
 - 9.3.6 keep the applicant informed of progress
 - 9.3.7 ensure that adequate records of the review process and findings are produced and maintained
 - 9.3.8 Where matters are referred to the Council itself for consideration, provide a report(s) to Council at interval through the review process and a final report at the conclusion of the process
- 9.4 The reviewing officer will assess the application, determine the appropriate action and arrange for the determination to be communicated to the applicant (Attachment A)
- 9.5 In undertaking the internal review, the CEO, Council or reviewing officer will review the decision in question to ensure that the original decision-making process has regard to the following:
 - 9.5.1 the decision maker had the power (delegation) to make the decision
 - 9.5.2 all matters relevant to the decision were considered and were not influenced by extraneous factors
 - 9.5.3 the process was free from bias
 - 9.5.4 the decision maker did not exercise a discretion or power in bad faith or for improper purpose
 - 9.5.5 the decision was made on facts and evidence
 - 9.5.6 the decision was reasonable
 - 9.5.7 any relevant legislation, policies or procedures were considered
 - 9.5.8 the decision maker did not exercise a discretionary power at the direction of another person

- 9.6 Where a request for review has been referred to Council, the applicant will be advised of the date that the matter will be presented and will be given the opportunity to provide a written or verbal submission (ie deputation) in relation to the report for Council's consideration. Full process for review of Council decision refer to Attachment B
- 9.7 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.

10. Procedural Fairness

- 10.1 Council will observe the principles of procedural fairness (also referred to as 'natural justice') when exercising its statutory powers which could affect the rights and interests of individuals when undertaking the review.
- 10.2 Procedural fairness involves:
- 10.2.1 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.
 - 10.2.2 ensuring the reviewing officer does not have a personal interest in the outcome (ie must not have a bias or perceived bias) and
 - 10.2.3 acting only on proper evidence that is capable of proving the case
- 10.3 The details of any request for a review will be kept confidential in so far as it is necessary, practicable and appropriate for conducting an effective review process

11. Outcome of a Review

- 11.1 Where the reviewer is the elected Council, the Council should determine whether to affirm, vary or revoke the original decision
- 11.2 Where the review has been conducted by a reviewing officer, the officer may make recommendations to the CEO to affirm, vary or revoke the original decision. The CEO will then make the final decision on the recommendations given by the reviewing officer to affirm, vary or revoke the decision.

12. Remedies

- 12.1 Where the review of a decision under this policy and procedure results in the applicant's grievance is upheld, an appropriate remedy will be determined that is reasonable in all the circumstances
- 12.2 The remedy chosen will be proportionate and appropriate to the outcomes of the review and may include (but is not limited to):
- 12.2.1 varying or revoking the original decision
 - 12.2.2 returning the situation to its original status (such as not pursuing the construction of something, not implementing the original decision etc)
 - 12.2.3 the provision on an explanation
 - 12.2.4 offering to enter into formal mediation

- 12.2.5 the offering of an apology or admission of fault
 - 12.2.6 a change to Council policy, procedure or practice
 - 12.2.7 the correction of Council records, noting this does not necessarily mean deleting records.
- 12.3 Where appropriate, the findings of an internal review will be considered in making improvements to Council's existing policies, procedures and practices.
- 12.4 Where a review has been undertaken, and the applicant is not satisfied, the CEO may recommend the case go to mediation, conciliation or neutral evaluation (as per section 271 of the Act)
- 12.5 Nothing in this policy or 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 in the process.

13. Delegations

Council acknowledges that the Chief Executive may sub-delegate matters related to this Policy to staff or other persons employed or engaged by council.

14. Annual Reporting

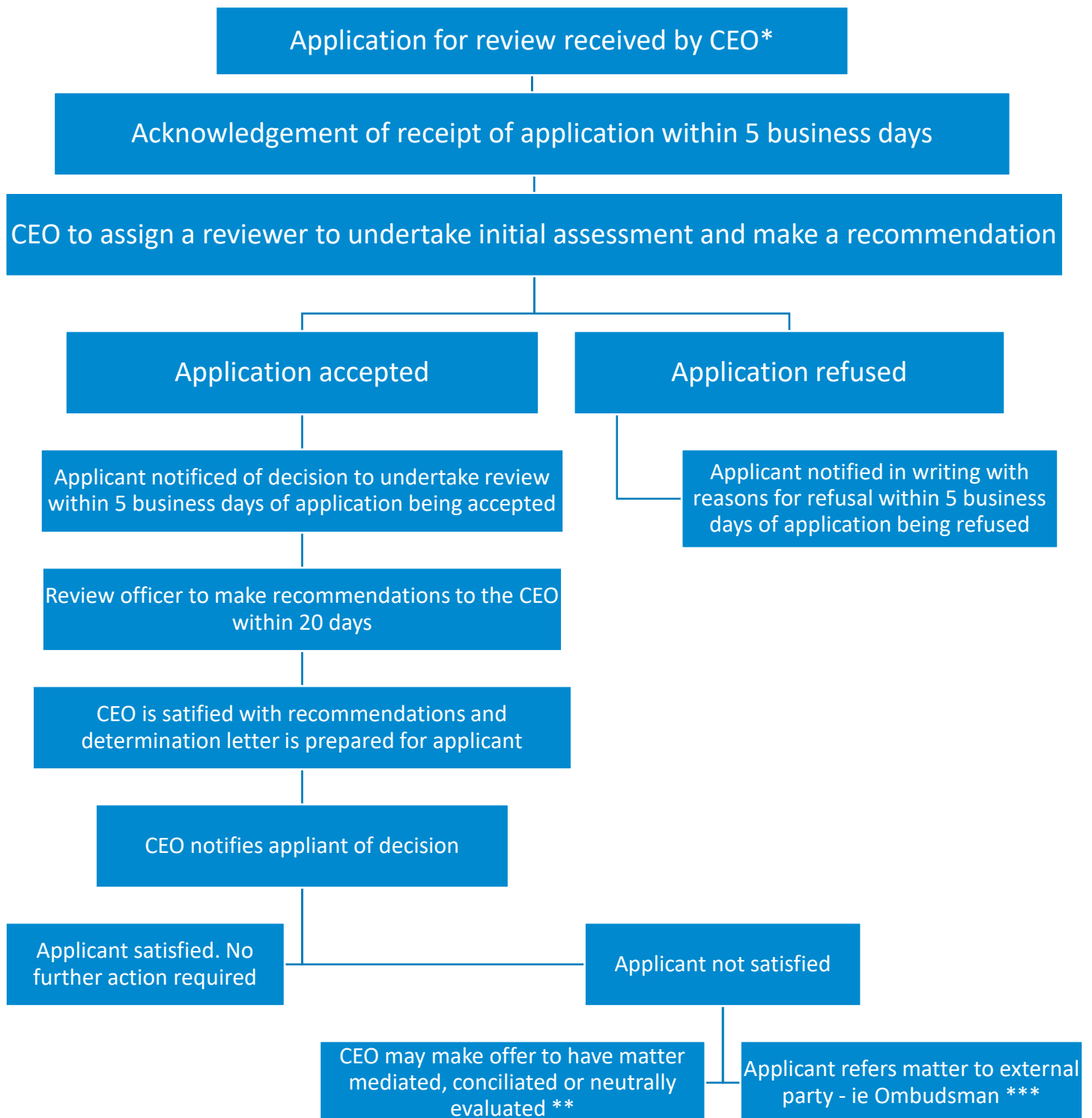
In accordance with section 270(8) of the Act, the Council will, on an annual basis, provide information in its Annual Report that relates to:

- The number of applications for review made under this section
- The kinds of matters to which the applications relate
- The outcomes of the applications made under this section, and
- Such other matters as may be prescribed by the Regulations under this Act.

15. Availability of Policy

This Policy will be available on the Council's website www.alexandrina.sa.gov.au. Copies will also be provided to interested members of the community upon payment of a fee in accordance with Council's Schedule of Fees and Charges.

ATTACHMENT A – Review of Decision made by Staff

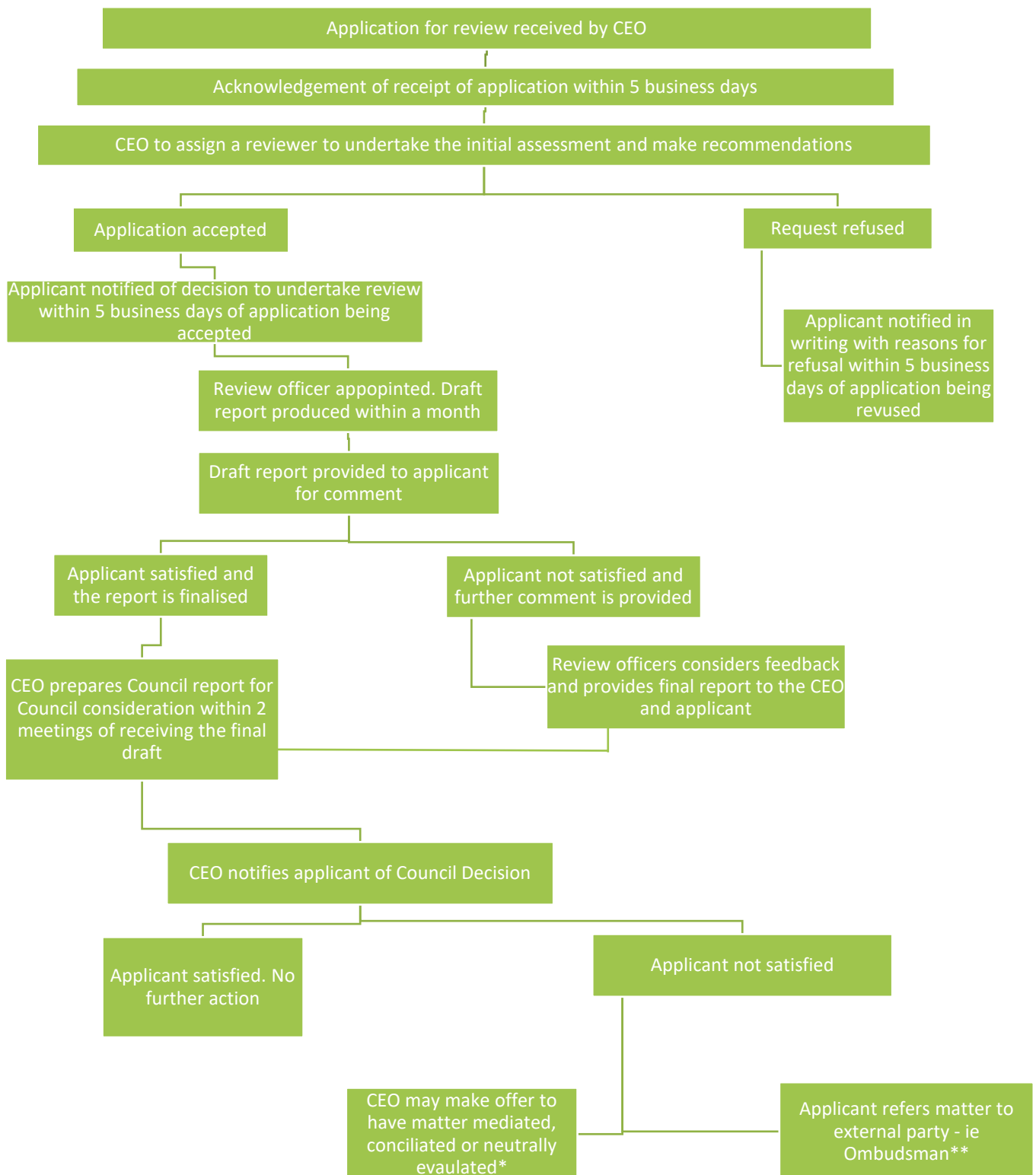


* Where the CEO is the matter of the complaint complaints should be addressed to the Mayor

** 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 at any time

ATTACHMENT B – Review of Decision made by Elected Body



* 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 at any time

Application for Internal Review of a Council Decision

Details of Applicant:

Name:

Address:

Contact Number: Date of Application:

Fees and Charges

An application fee of \$20 must be submitted with the completed application form.

Is the application fee attached? ☐ Yes ☐ No

Application fee is in the form of ☐ Cash ☐ Credit Card

Please do not send cash through the mail.

If you wish to pay over the phone via credit card please phone Council alternatively payment can be made at the Customer Service Counters at either Goolwa or Strathalbyn.

This application will not be valid until the application fee has been received.

Details of Application:

I request a review of the following decision made by Council:

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My reason for requesting a review of the decision is because:

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Applicant's Signature: **Date:**/...../.....

Application Received:/...../..... Payment received:/...../.....