

Internal Document

Procedure for External Review of ASA Decisions

Revision 1
Issued Date: 17/03/2014
Effective Date: 17/03/2014

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Document approval	
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Document control	
Revision	Summary of change
0.1	3183110_2 First publication
1.0	Approved by ELC

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1. Introduction

The ASA, on behalf of TfNSW, performs a number of significant functions in relation to NSW Transport Assets which include administration of the Authorised Engineering Organisation framework, asset planning, and the setting and maintaining of requirements. Decisions made by the ASA can directly affect the rights and interests of individuals or organisations. ASA is committed to a fair decision-making procedure also known as procedural fairness.

Organisations affected by a decision of the ASA have an opportunity to express their views to the ASA during the decision making process. However, should the organisation remain dissatisfied, then at the request of the organisation an Internal Review and External Review process are available to examine the decision. The External Review process cannot be accessed directly; it must follow a mandatory Internal Review process.

2. Purpose

The purpose of this procedure is to ensure that an applicant has access to a fair, reasonable and unbiased review process and ultimately help to improve ASA decision processes.

2.1 Scope

This procedure is for the external review of ASA decisions. This procedure is specifically focussed on reviews relating to decisions affecting particular applicants.

2.2 Application

This procedure applies to decisions of the ASA including, but not limited to:-

- (a) an organisation whose AEO application is refused;
- (b) an organisation whose AEO application is reduced in scope or subject to conditions
- (c) an organisation whose product is subject to conditions under the type approval process
- (d) the decision not to grant concessions to standard

The review is a process by which an external committee is convened to reconsider the decision by assessing the available material and 'stepping into the shoes' of the primary decision maker.

3. Reference documents

Australian Government Administrative Review Council - Internal Review of Agency Decision Making Report No. 44, November 2000

Reviews of Fair Trading decisions- NSW Fair Trading, [http://www.fairtrading.nsw.gov.au/About us/Our services/Reviews of Fair Trading](http://www.fairtrading.nsw.gov.au/About-us/Our-services/Reviews-of-Fair-Trading)

Australian Government Administrative Review Council - Decision Making Best-practice guides
1-5, August 2007, [<http://www.law.gov.au/arc>]

4. Terms and definitions

The following definitions apply in this document:

Applicant: The organisation that has applied for a review of an ASA decision.

5. External Review

The Asset Standards Authority is committed to transparency, fairness, integrity and honesty in the development and implementation of ASA decision processes. Where a person believes that sufficient grounds exist for an ASA decision to warrant an external review then a request must be made to the ASA within 28 days of the completion of the Internal Review.

5.1 External Review Panel

The External Review Panel (ERP) shall comprise two or three members depending on the nature of the decision under review. A Chair with appropriate level of management experience and independent of the area under review, an expert in the technical process area and an expert in audit (if required). The decisions of the ERP must reflect the public interest. However the public interest test must include the policy position of government and the remit of TfNSW and the ASA.

5.2 ERP Authority

The purpose of the ERP is to examine an ASA decision from the position of the primary decision maker and to make recommendations on whether it concurs with the original decision or whether the ASA should reconsider the decision based on its findings and reasoning.

5.3 Acting on Recommendations of the ERP

The ASA is required to act on recommendation of the ERP within 14 days of the findings being advised.

The ASA may elect to:-

1. Agree and implement the findings of the ERP.
2. Adopt part of the findings of the ERP
3. Maintain the reviewable decision
4. Set aside the reviewable decision and substitute another decision based on the findings of the ERP

If the ASA chooses not to adopt a particular recommendation of the ERP, ASA is required to justify to the applicant the reasons for its decision. The applicant shall be provided with a statement setting out the following:

- (a) the findings on material questions of fact, referring to the evidence or other material on which those findings were based,
- (b) the reasoning processes that led the ASA to the conclusions made.

5.3.1 Conflicts of interests

It is recognised that the ERP will be constituted from industry representatives which may have established relationships with the parties that are subject to the review. Members of the ERP will be required to disclose potential conflicts in accordance with the TfNSW Statement of Business Ethics and TfNSW Code of Conduct prior to formally sitting in consideration of the review. Conflicts may include whether an ERP member:

- has a pre-existing relationship with the parties; or
- is party to any unusual remuneration arrangements, including whether the ERP member's remuneration is dependent on the outcome of the matter.

5.3.2 Submission of Additional Information

The review considers all the material that was available to the original decision maker at the time the decision was made and any new, relevant information that has become available since that decision, including information provided by the applicant.

In the interests of an efficient and timely review process, based on any new additional information, the ERP may wish to clarify a decision with the original decision maker and act to mediate a resolution without necessitating making a finding.

5.4 Process Overview

- a) Opportunity to apply for an external review is communicated to customers of the ASA following the completion of the Internal Review Process as described in 8SA-PR-003.
- b) Applications for Review are registered by the ASA and an External Review Panel established.
- c) The ERP is briefed on the nature of the review based on the material in possession of the ASA and any additional information supplied by the applicant.
- d) Review is undertaken by the ERP and recommendations/findings provided to the ASA and the applicant no more than 20 business days from the receipt of request.
- e) The ASA provides its position and reasoning to the applicant following consideration of the ERP findings and recommendations no more than 5 business days following receipt of the review recommendations/findings.

- f) Closing discussion is undertaken with the applicant to discuss the ASA decision and the rationale behind it.

5.5 Registering and Monitoring Applications for Review

The Director ASA shall appoint the Quality Manager or equivalent, to register, monitor and report on the progress of external review applications. The manager shall report review KPIs to the Director ASA who shall ensure that external review outcomes are delivered in accordance with the timescales set out in this procedure.

5.6 Review Process

The primary duty of the ERP is to establish whether or not procedural fairness is evident in the decision process for which the applicant has requested a review. Determining procedural fairness has been broken down into the following parts:

- a) Is the decision within the jurisdiction of the ASA to make?

The objectives, functions, powers and governance of the ASA are set down in The Charter which should provide adequate guidance as to whether the decision is within the ASA's jurisdiction.

- b) Is the decision process reasonable?

The ASA, as a responsible and professional unit within Transport for NSW, has an obligation to ensure that decision processes, which might impact other government and non-government enterprises, can meet the reasonable expectations of those enterprises. It is a matter for the ERP to form an opinion as to what "reasonable expectations" is to mean. Such opinion should be informed by comparison with standards or accepted practice in other comparable areas, industries or disciplines. Examples include processes for audit, assessment, review, investigation and expert opinion.

Example tasks that might be reviewed include the processes for determining the competency of the original decision maker, the record keeping, any trade-off studies, communication and consultation processes, reasonableness of the timelines. In order to avoid confusion it is again stated that it is the *decision process* which must be seen to be reasonable.

5.6.2 Procedural Basis for the Original Decision

The ERP shall first establish the procedural basis for the decision. Typically this will commence with a reference to the ASA. Without a procedural basis for the original decision it will be difficult to demonstrate procedural fairness

- The ERP shall undertake a document based review
- The ERP shall interview the applicant and ASA staff as they see fit

5.6.3 Internal review as a mandatory precursor to external review

An internal review shall be conducted as a mandatory precursor to external review.

5.7 Learning from review

ASA values the Internal Review process as a valuable tool to improve decision making quality. The Internal and External Review processes are designed to enable errors to be corrected, to improve the way decisions are made, to ensure transparency, and to engender public confidence in the integrity of the ASA.

Data gathered from the internal review process will be analysed to monitor trends and identify problems. This data will then be used as the basis for lessons learned and to provide feedback to primary decision makers about their decision making.

The ASA will also report to TfNSW management on how often this process has had to be used and what the results were.