

# Internal Review of a Council Decision Procedure

Procedure Author	General Manager Corporate Services
Date of next review	February 2028

## 1. Purpose

The Council, including workers and other people acting on behalf of the Council, make decisions everyday which impact members of its community. It is imperative that these decisions are fair, objective and where appropriate, subject to review.

This Procedure relates to formal applications seeking a review of a decision made by the Council, employees and other persons acting on behalf of the Council and applies to all employees who may be involved in receiving an application for a review of a Council decision.

The Council 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.

This Procedure commences at the point that the Council receives an application for an internal review of a Council decision and covers the process for:

- Making an application.
- Receiving, managing, considering and determining an application.

The Council recognises the importance of transparency in Council decision-making where practicable and appropriate and the need to provide a fair, objective and consistent process for the review of Council decisions.

This Procedure is 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.

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

While the Council prefers to work with its customers to resolve applications 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.

## 1.1 Matters outside the scope of this Procedure

Some decisions fall outside the scope of this Procedure as an alternative statutory process for a review or appeal may exist in other legislation. Examples of other legislation containing statutory review or appeal processes include:

- *Planning, Development and Infrastructure Act 2016*
- *Freedom of Information Act 1991*
- *Expiation of Offences Act 1996*

Applicants seeking a review of a Council decision should check if any other legislation applies to the matter before proceeding with an application. The purpose of this Procedure is to fill the gaps in the law where there is no right of review available.

## 2. References and Supporting Documentation

This Procedure is to be read in conjunction with the Complaints Handling Policy.

Related documents include:

- *Local Government Act 1999* – Section 270
- Complaints Handling Procedure
- Request for Service Policy and Procedure
- Hardship Policy and Procedure
- City of Playford Global Glossary
- Ombudsman SA, Right of Review, An audit of Local Government Internal Review of Council Decisions Procedures, November 2016
- Report to the Minister for Local Government, Right of Review, An audit of Local Government Internal Review of Council Decisions Procedures, June 2017

## 3. Application

Chief Executive Officer	<p>Ensure the Internal Review of a Council Decision Procedure is implemented in accordance with Section 270 of the <i>Local Government Act 1999</i> and subject to periodic evaluation and review.</p> <p>Determine who will be the reviewer for a request for an internal review of a Council decision application.</p>
Manager Governance	<p>Undertake the role of Council's Internal Review Contact Officer (IRCO).</p> <p>Receive, acknowledge, and manage the process regarding Internal Review of a Council Decision applications.</p>

## 4. Procedure

### 4.1 Internal Review Contact Officer

4.1.1 The Council's Internal Review Contact Officer (IRCO) is the initial point of contact for all applicants. The IRCO is the Manager Governance or their delegate. Contact with the IRCO can be made by emailing: [governance@playford.sa.gov.au](mailto:governance@playford.sa.gov.au)

4.1.2 The role of the IRCO is to:

- a) Explain this Procedure to the applicant and explore any alternative options to resolve the matter, such as alternative dispute resolution prior to an application being lodged or dealt with.
- b) Acknowledge the receipt of the application.
- c) Liaise with the CEO to determine who the reviewer will be.
- d) Maintain a register of all applications received and the outcomes of the applications.
- e) Outline the expected timeframes involved and the process that will be followed.
- f) Ensure, in conjunction with the officer who is dealing with the application, that the application is dealt with in accordance with this Procedure.
- g) Ensure the application is properly lodged and assigned.
- h) Keep the applicant informed at regular intervals, as appropriate, of the progress of the application.
- i) Ensure, in conjunction with the officer who is dealing with the application, that adequate records are maintained.

All applications are to be referred to the IRCO immediately.

### 4.2 Making an Application

4.2.1 An application for a review of a Council decision must:

- Be in writing;
- Be addressed to Manager Governance;
- 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 how they otherwise have an interest in the decision) and set out clearly and succinctly the reason for applying for the review;
- Be lodged within 6 months of the decision being made; and
- Be accompanied by the prescribed \$20 application fee.

- 4.2.2 Although the Council can be expected to have information and material relevant to the decision to which the application relates, an application may also include new, relevant information or evidence to support the application.
- 4.2.3 Applications that do not meet the criteria for making an application set out above, including applications that are lodged 6 months or longer after the decision was made, will not be accepted. However, the Chief Executive Officer (CEO) may determine under authorisation and with absolute discretion, having regard to such matters as considered appropriate, to accept an application notwithstanding that it does not meet the criteria for making an application.

### 4.3 Assisting with Application of Review

- 4.3.1 It is essential that no one is excluded from lodging an application because of any difficulties they may have representing themselves, or managing payment of the prescribed fee. All employees are expected to offer assistance where appropriate and provide it on request, including assistance in documenting the reasons for the application in writing when circumstances warrant.
- 4.3.2 If necessary, access to interpreters, aids and Council's Hardship Policy will be arranged to ensure that an applicant is treated equitably.

### 4.4 Acknowledgement and Expected Timeframes

- 4.4.1 Applications will be acknowledged within 10 business days of receipt of the application, and at that time, the applicant will also be advised of the expected timeframe for dealing with the matter.
- 4.4.2 Council will use its best endeavours to ensure that a review of the original decision will be completed within 30 business days. However, there are a number of factors that may prevent this timeframe from being met, including if the decision is to be reviewed by the Council, a committee, or if external assistance is to be provided to the Council in undertaking the review. In addition, complex cases may require more time for the review to be completed.

### 4.5 Applications for a Review of the impact of rates or service charges

- 4.5.1 If Council receives an application for a review of a decision relating to the impact that any declaration of Council rates or services charges may have had on the applicant, such applications will be given priority. In addition, such applications will, where appropriate, be addressed through the provision of relief or concessions, in line with the provisions of the *Local Government Act 1999*.

### 4.6 Undertaking a Review

#### 4.6.1 Reviewer

- 4.6.1.1 The CEO may be the reviewer and deal with any application for a review of a Council decision, in accordance with this Procedure, except an application that relates to a decision of the CEO, the Council or a Council committee. In which case, the IRCO will refer the application to the elected body for the Council to be the reviewer, with such information as the IRCO considers relevant.
- 4.6.1.2 The CEO may refer an application for a review of a Council decision to any employee that the CEO considers appropriate to be the reviewer, to be dealt with in accordance

with this Procedure. The employee to whom the application has been referred must not be the same Council employee that made the original decision.

**4.6.1.3 The elected body of Council will be the reviewer:**

- a) When the decision being reviewed was made by the elected body of the Council, a committee of the Council or the CEO;
- b) When the decision relates to civic and ceremonial matters; or
- c) In relation to other applications as determined by the CEO or by resolution of the Council.

**4.6.1.4 Where the elected body of the Council is the reviewer, the CEO will ensure all necessary and appropriate information is prepared and presented to the Council to assist it with the review.**

**4.6.1.5 The reviewer may seek the assistance of such persons or bodies including persons and bodies external to the Council to assist the reviewer to undertake the review in accordance with this procedure.**

**4.6.2 Role of the Reviewer**

**4.6.2.1 The role of a reviewer is to review the decision to which the application relates, and determine if the original decision is the correct and preferable decision in the circumstances existing at the time of the application and having regard to the following matters:**

- a) The decision must be within a power properly conferred on the decision-maker under legislation.
- b) 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.
- c) A decision-maker must not exercise a discretion power in bad faith, for an improper purpose or while subject to duress or the improper influence of another person.
- d) A decision maker must not have a conflict of interest or actual or apprehended bias in the decision.
- e) A decision-maker must ensure that findings of fact are based on evidence.
- f) Decisions must be reasonable.
- g) Those who may be affected by a decision must be accorded procedural fairness, which includes the principles of natural justice.
- h) A decision-maker must properly consider any relevant legislation, policies and procedures.

### **4.6.3 Review Process**

- 4.6.3.1 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 available at the time of undertaking the review. The reviewer will 'stand in the shoes' of the original decision-maker and make the best decision available based on the evidence.
- 4.6.3.2 This means the reviewer will do more than simply consider whether the decision is legally correct. The reviewer will also undertake a merits review and consider whether a different decision would be better, based on the evidence.
- 4.6.3.3 The reviewer may determine that an application which relates to a decision that has already been implemented and therefore cannot be revoked, will not be the subject of a merits review and will only be subject to a process review. In such instances, the applicant will be advised of this as soon as possible.

### **4.6.4 Providing Procedural Fairness**

- 4.6.4.1 Those that may be affected by a decision must be accorded procedural fairness, which includes the principles of natural justice.
- 4.6.4.2 As part of the review process, any party whose rights, interests or legitimate expectations will be affected by a decision, will have the opportunity to make a written submission.
- 4.6.4.3 'Procedural fairness' involves:
  - a) Giving a person a right to put their case forward. This will generally involve giving a person the opportunity to provide all relevant documentary evidence, rather than an oral hearing.
  - b) Ensuring that the reviewer does not have a personal interest in the outcome (is not biased).

### **4.6.5 Giving Reasons**

- 4.6.5.1 The applicant will be informed in writing of the outcome of the review.
- 4.6.5.2 While there is no statutory requirement to provide justification for a decision, the Council will provide reasons for the decision of the reviewer where practicable.

### **4.6.6 Refusing an Application for Review**

- 4.6.6.1 The Council, CEO or reviewer may refuse to consider an application for review if:
  - a) The application is made by an employee of the Council and relates to an issue concerning their employment.
  - b) It appears that the application is frivolous or vexatious.
  - c) The applicant does not have a sufficient interest in the matter.

#### 4.6.7 Remedies

4.6.7.1 Where the outcome of a review of a decision is that the original decision is not the best decision, an appropriate remedy or response will be determined by the reviewer which is consistent and fair for both Council and applicant. The remedy may include:

- Varying the original decision.
- Returning the situation to its original status.
- An explanation.
- Mediation.
- An apology.
- A change to Council policy, procedure or practice.
- A correction to Council records.

4.6.7.2 The remedy or response may be one, or a combination of these actions. The chosen remedy will be proportionate and appropriate and take into account what the applicant is seeking as an outcome of the review.

4.6.7.3 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.

#### 4.6.8 Reporting

4.6.8.1 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.

4.6.8.2 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, and
- d) Other matters as may be prescribed by the regulations.

4.6.8.3 In accordance with Section 270(8) of the *Local Government Act 1999*, the information specified in 4.6.8.2 will be included in Council's Annual Report.

## 5. Feedback

Your feedback on this policy is invited and can be directed to the Manager Governance via email to [governance@playford.sa.gov.au](mailto:governance@playford.sa.gov.au) or by calling the Customer Contact Team on 8256 0333.

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#### Administration use only

ECM document set no.	3978346
Version no.	3
Policy link	Complaints Handling Policy
Procedure author	General Manager Corporate Services
Endorsed by	Council

Resolution no.	5747
Legal requirement	<i>Local Government Act 1999</i> – Section 270
Review schedule	Every 4 years
Date of current version	February 2024
Date of next review	February 2028

### Version history

Version no.	Approval date	Approval by	Change
1	22/03/2016	Ordinary Council Resolution No. 2519	New Procedure
2	25/05/2021	Ordinary Council Resolution No. 4629	Removed reference to tier system of complaints as an internal review does not constitute a complaint.  Updated in accordance with sections of the Ombudsman SA's model policy and procedure
3	27/02/2024	Ordinary Council Resolution No. 5747	Scheduled review.  Updated to include mandatory prescribed fee.

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