	<b>Internal Review of Council Decisions Procedure</b>	
	<b>Version Adoption by Council:</b> 22 August 2022 <b>Resolution Number:</b> 2022/284 <b>Current Version:</b> V4	
	<b>Administered by:</b> General Manager – Governance and Executive Office	<b>Last Review:</b> 2022 <b>Next Review:</b> 2024
<b>Document No:</b> D22/415650	<b>Related Policy:</b> Internal Review of Council Decisions Policy	

## 1. Introduction

The aim of this Procedure is to ensure a fair, consistent and structured process for any party dissatisfied with a decision that has been made by Council or its agents.

This Procedure sets out Council's complaints handling framework and the process for applying for a review of a Council decision. This Procedure should be read in conjunction with Council's *Internal Review of Council Decisions Policy* (the Policy).

## 2. Definitions

**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 request/s for review. Examples include residents, ratepayers, members of a community group, users of the Adelaide Plains Council's facilities and visitors to the area.

**Business Day** means a day when the Adelaide Plains Council is normally open for business, i.e. Monday to Friday, excluding public holidays.

**Council** refers to the Adelaide Plains Council.

**Decision** is a position adopted by the Adelaide Plains 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 Adelaide Plains 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** refers to a complaint or request that lacks substance or merit, or is otherwise trivial in nature.

**Internal Review Contact Officer** refers to the Council employee appointed by the Chief Executive Officer as the initial point of contact for applicants.

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

**The Policy** refers to Council's *Internal Review of Council Decisions Policy*, available on Council's website.

**Vexatious** refers to a complaint or request that is specifically being pursued to simply harass, annoy, delay or cause detriment to the Council or a third party.

### **3. Procedure**

#### **3.1 Complaints handling**

Wherever practicable, customer complaints regarding a Council decision should be referred for immediate resolution in accordance with Council's *Complaints Handling Policy*.

In summary, Council has a three-tier process for managing complaints:-

##### ***Tier 1 – Immediate response to resolve the complaint***

All staff are empowered to handle complaints in the first instance and it is preferable that they are dealt with promptly at the initial point of contact and at the appropriate officer level.

##### ***Tier 2 – Complaint escalated to a more senior officer***

A complaint will be directed to a more senior officer in the Council, where circumstances indicate that the complaint would be more appropriately handled at a higher level. This may occur, for example, where an officer has been involved in the matter that is the subject of the complaint, where the complaint is about an issue that requires a decision to be made at a more senior level, or where a complaint concerns a matter that ranges across more than one Council work area.

### ***Tier 3 – Internal review of a Council decision by statutory process***

Internal review of a Council decision is available under Section 270 of the *Local Government Act 1999* (the Local Government Act) and will be undertaken in accordance with this Procedure. This is a process established by legislation that enables a Council to reconsider all the evidence relied on to make a decision, including new evidence if relevant. This process is generally a last resort in the complaint handling process, but may also be used in situations which are not able to be resolved by other means, such as a complaint about a decision of the Chief Executive Officer (CEO).

An application for review should only be made once the other mechanisms under the *Complaints Handling Policy* have been undertaken as these may resolve the matter more quickly. As the third tier in Council's complaint handling process, review under this Procedure will generally apply when matters cannot be resolved satisfactorily under the other two tiers.

### **3.2 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 (for example, where a Council issues a permit for a person to keep more than the maximum number of dogs permitted under a by-law, a neighbour may seek an internal review of the decision). Council will determine whether a person has a sufficient interest to apply for an internal review of a decision, on a case-by-case basis. Where Council determines an applicant does not have a sufficient interest in a matter, reasons will be provided in accordance with clause 4.6.

An application for review **must** be in writing and addressed to the 'Chief Executive Officer' and forwarded via:

- post to: Adelaide Plains Council, PO Box 18, Mallala SA 5502;
- email to: [info@apc.sa.gov.au](mailto:info@apc.sa.gov.au); or
- in person at the Mallala Principal Office at 2a Wasleys Road, Mallala SA 5502 or at Council's Service Centre at Two Wells.

Applicants are strongly encouraged to use the form prepared by Council, '*Application for Internal Review of a Council Decision*' (**Appendix 1**).

Applications **must** include:-

- a statement clearly indicating that the applicant wishes to have a decision reviewed under section 270 of the Local Government Act;
- detail of the decision to be reviewed;
- the reasons for applying for the review (that is, why the applicant believes that the decision is wrong). Although Council can be expected to have information and material relevant to the matter under review, an application for review may also include new, relevant information or evidence to support the application; and
- any other relevant information.

In accordance with section 270(2a) of the Local Government Act, an application for internal review must be made within six (6) months of the making of the decision of which review is sought.

In appropriate cases (for example, because important facts have come to light only after the expiry of the six-month period), an application may be accepted more than six (6) months after the making of the decision.

The decision whether to accept a late application will be made by:

- the Chief Executive Officer; or
- the Council, if the decision-maker of the relevant decision is the Chief Executive Officer.

Such a decision is at the sole discretion of the Chief Executive Officer or the Council, whichever is applicable.

In accordance with section 270(3) of the Local Government Act, an application for review must be accompanied by the prescribed fee which is currently \$20.

### **3.3 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 in documenting the reasons for the review in writing when circumstances warrant.

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

### **3.4 Internal Review Contact Officer**

An Internal Review Contact Officer (IRCO) appointed by the Chief Executive Officer is the initial point of contact for applicants.

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;
- 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; and
- report to Council at prescribed intervals on all applications lodged for review.

All applications are to be referred to the IRCO immediately upon receipt. A person seeking review of a Council decision who contacts Council's offices will be referred to the IRCO. The IRCO will discuss this Procedure with the person and, in particular, advise that an application for review must be lodged in writing.

### **3.5 Acknowledging an application for review**

The IRCO is responsible for:-

- assisting the CEO in making an initial determination whether to accept or refuse the application for review, and responding to the applicant accordingly (refer clause 4.2 for basis for refusing an application);
- determining how the review will be handled (refer clause 4.1);
- advising the applicant of the process to be undertaken and the time of the next contact; and
- ensuring the application is properly lodged and assigned.

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. Council will use its best endeavours to ensure that a review of the original decision will be completed within twenty-one (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.

### **3.6 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.

## **4. Undertaking a Review**

### **4.1 Reviewer**

The IRCO, in conjunction with the CEO, will determine the most appropriate person/body to undertake the review after taking into account the information supplied and the level within the organisation at which the decision was made.

Wherever possible and appropriate, the IRCO will involve an external person or panel to assist with the review.

Where the elected Council, a Council Committee or the CEO is the decision-maker, or when the decision relates to civic and ceremonial matters, the Council will consider the outcome of the review and determine whether to affirm, vary or revoke the reviewed decision.

## **4.2 Refusing an application for review**

In accordance with clause 3.5, an application for review may be refused 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; or
- the subject matter of the application has been or is already the subject of a review by the Council or an investigation, inquiry or review by another authority; or

the application relates to a decision subject to review or appeal processes set out in other legislation (refer clause 3.2 of the Policy). An application will be refused if the application is for a review of a decision of Council:

- to refuse to deal with, or determine to take no further action in relation to, a complaint under Part A1 Division 1 of Chapter 13 of the Local Government Act by a person who is dissatisfied with the decision; or
- relating to a recommendation of the Ombudsman under Part 1 of Chapter 13 of the Local Government Act.

Where an application for review is refused, reasons for the refusal will be provided to the applicant in writing.

## **4.3 Purpose of a review**

The purpose of an internal review 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 having regard to the following principles where applicable:-

- 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 existing policies.
- A decision-maker must not exercise a discretionary power at the direction of another person.

#### **4.4 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 ‘stand in the shoes’ of the original decision-maker and make the best decision available on the evidence.

This means the reviewer will do more than simply consider whether the decision is legally and procedurally correct. 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.

#### **4.5 Providing ‘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.



#### **4.6 Giving reasons**

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

Council will always 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.

#### **5. Outcome of Review**

Where the reviewer is the elected Council, the elected Council should determine whether to affirm, vary or revoke the original decisions.

Where the reviewer is a Council employee, the employee may determine whether to affirm, vary or revoke the original decision if authority to make the decision has been delegated to that employee. If the reviewer does not have delegation enabling the making of a decision, then the reviewer should report the outcome of the review to the elected Council (or delegate) for a determination as to whether the decision should be affirmed, varied or revoked.

Where the reviewer is an external person or body, the outcome of the review will be reported to the elected Council for a determination as to whether the decision should be affirmed, varied or revoked. An external reviewer cannot vary or revoke a decision made by or on behalf of Council.

#### **6. 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 will record detailed information regarding the number, types and outcomes of applications for review, in accordance with the Policy.

## **7. Related Documents**

Annual Report

Application for Internal Review of a Council Decision (attached)

Customer Service Charter

Complaints Handling Policy

Internal Review of Council Decisions Policy

Requests for Services Policy

## **8. Records Management**

All documents relating to this Procedure will be registered in Council's Record Management System and remain confidential where identified.

## **9. Document Review**

This Procedure will be reviewed every two (2) years, in accordance with Council's Policy Review Schedule, to ensure legislative compliance and that it continues to meet the requirements of Council, its activities and programs.

## **10. References**

*Local Government Act 1999*

SA Ombudsman [www.ombudsman.sa.gov.au](http://www.ombudsman.sa.gov.au)


## **11. Further Information**

Members of the public may inspect this Procedure free of charge on Council's website at [www.apc.sa.gov.au](http://www.apc.sa.gov.au) or Council's Principal Office at 2a Wasleys Rd, Mallala SA 5502.

On payment of a fee, a copy of this Procedure may be obtained.

Any queries in relation to this Procedure must be in writing and directed to the General Manager – Governance and Executive Office.

## APPENDIX 1

	<b>Application for Internal Review of a Council Decision</b> Pursuant to Section 270 of the <i>Local Government Act 1999</i>	
	<b>Administered by:</b> Chief Executive Officer	<b>Last Review Date:</b> 2022 <b>Next Review Date:</b> 2024
	<b>RELATED POLICY:</b> Internal Review of Council Decisions Policy	
<b>Applicant's Details</b>		
<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms		Name:
Address:		
Email:		
Telephone:		Mobile:
<b>Date of Initial Complaint:</b>		<b>Officer's Name:</b>
<b>Date of Escalated Complaint:</b>		<b>Senior Officer's Name:</b>
<b>Details of Council Decision to be reviewed (as a last resort of complaint handling process):</b>		
<b>Reasons for Requesting Review:</b>		

<b>Your Interest in the Matter:</b>	
<b>Further Information:</b>	
<b>Signature of Applicant:</b>	<b>Date:</b>
<input type="checkbox"/> I acknowledge that, in accordance with section 270(3) of the <i>Local Government Act 1999</i> , this application for review must be accompanied by the prescribed fee (\$20). An application will not be considered 'received' until payment of the prescribed fee is also	