



Internal Review of a Council Decision Procedure

Classification	Procedure
Strategic reference	Goal 4 :Governance and Organisational Culture
Relevant legislation	<i>Local Government Act 1999</i>
Relevant documents	Complaints Handling Policy and Procedure
Responsibly officer	Chief Executive Officer
Version	2.0
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Next Review Date	December 2027

1. INTRODUCTION

- 1.1. Council, its committees, staff and contractors make decisions every day which impact on members of the community.
- 1.2. Council is committed to open, responsive and accountable government and to ensuring decisions made are fair, objective and subject to review. This includes providing processes by which citizens adversely affected by a decision of Council can have their grievances considered.
- 1.3. This Procedure will be widely accessible to ensure that customers are fully aware of their right to request the review of a decision and the process that will be followed.
- 1.4. Everyone will be treated equally, in accordance with good administrative practice.
- 1.5. This Procedure sets out:
 - 1.5.1. the decisions which are subject to review;
 - 1.5.2. the method for applying for a review;
 - 1.5.3. the review process; and
 - 1.5.4. record keeping requirements

2. INTERNAL REVIEW OF A COUNCIL DECISION

- 2.1. An internal review of a Council decision is undertaken when informal complaints processes have been exhausted.
- 2.2. An internal review evaluates the process undertaken by Council in reaching its decision, particularly as to whether the decision made by the Council was:
 - 2.2.1. a reasonable decision to make in the circumstances;
 - 2.2.2. a decision open to be made on the facts before the decision-maker; and
 - 2.2.3. a decision made in the public interest
- 2.3. A review of decisions will also establish if the decision-making process was flawed in any manner.



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2.4. Council's Procedure is designed to ensure that:

- 2.4.1. Every person is treated equally and has the opportunity to make an application for review of a decision covered by this procedure;
- 2.4.2. An unbiased review is undertaken;
- 2.4.3. Outcomes of a review are based on sound evidence; and
- 2.4.4. Applicants receive information about the outcome of the review.

3. LEGISLATIVE CONTEXT

- 3.1. This Procedure is required by section 270(1) of the *Local Government Act 1999* (the "Act") and forms part of the Council's processes for dealing with complaints.
- 3.2. Section 270(1) states that a council must establish procedures for the review of decisions of:
 - 3.2.1. The council;
 - 3.2.2. Employees of the council;
 - 3.2.3. Other persons acting on behalf of the council.
- 3.3. Section 270(2) states that the procedures must address at least the following matters:
- 3.4. The manner in which an application for a review may be made
 - 3.4.1. The assignment of a suitable person to reconsider a decision under a review
 - 3.4.2. The matters that must be referred to the council itself for consideration or further consideration
 - 3.4.3. Notification of the progress and outcome of an application for a review
 - 3.4.4. The timeframes within which notifications will be made and procedures on a review will be completed
 - 3.4.5. In the case of applications relating to the impact that any declaration of rates or service charges may have had on ratepayers, to ensure that these applications can be dealt with promptly and, if appropriate, addressed through the provision of relief or concessions under the Act.
- 3.5. Section 270(8) states that a council must, on an annual basis, initiate and consider a report that relates to:
 - 3.5.1. The number of applications for review made under this section
 - 3.5.2. The kinds of matters to which the applications relate
 - 3.5.3. The outcome of applications under this section



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- 3.5.4. Such other matters as may be prescribed by the regulations.
- 3.6. The *Local Government (General) Regulations 2013* prescribe that the report required under Section 270(8) of the Act must be published in the Council's Annual Report.
- 3.7. Section 271 of the Act provides an option for a council to make provision for disputes between a person and the council to be dealt under a scheme involving mediation, conciliation or neutral evaluation, with the costs of any work done under such a scheme to be shared between the council and the other party.

4. DEFINITIONS

- 4.1. **Alternative Dispute Resolution** includes mediation, conciliation or neutral evaluation as set out in section 271 of the Act.
- 4.2. **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.
- 4.3. **Business Day** means a day when the Council is normally open for business, i.e. Monday to Friday, excluding public holidays.
- 4.4. **CEO** refers to the Chief Executive Officer of the Southern Mallee District Council, including anyone for the time so being acting in that role.
- 4.5. **Council** refers to the Southern Mallee District Council
- 4.6. **Decision of Council** or **Council decision** or **decision** (when used in the context of the purpose of the policy) is a decision of the Council or a Council Committee, a decision of an employee of Council or decisions of another person acting on behalf of Council.
- 4.7. **Decision-maker** refers to the individual or entity responsible for the decision under review.
- 4.8. **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.
- 4.9. A **frivolous** request for a review of a decision includes, but is not limited to, requests that have no serious purpose or value.
- 4.10. **Merits review** is a process by which a person or body, other than the original decision maker, reconsiders the facts, law and policy aspects of the original decision and determines the correct or preferable decision.
- 4.11. **Process review** is a review of the correctness of the procedures followed in making a decision.
- 4.12. **Reviewer** refers to the individual or entity responsible for resolution of a request for review of a decision.
- 4.13. **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



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affected by the decision under review or be a person (including an organisation) who can demonstrate some special interest in the subject matter.

- 4.14. A **vexatious** request for a review of a decision includes, but is not limited to, requests made without sufficient grounds or that are submitted only to cause disruption, delay, distress or annoyance.

5. CUSTOMER COMPLAINTS

Council has a three-tier process for managing customer complaints, set out below.

- 5.1. Immediate response to resolve the complaint
 - 5.1.1. All employees 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.
- 5.2. Complaint escalated to a more senior officer
 - 5.2.1. 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.
 - 5.2.2. 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.
- 5.3. Internal review of a Council decision
 - 5.3.1. Internal review of a Council decision will be in accordance with this Procedure.
 - 5.3.2. This Procedure enables Council to reconsider all the evidence relied on to make a decision, including new evidence if relevant.

6. KEY PRINCIPLES

The Procedure for reviewing decisions is based on the following five principles:

- 6.1. Fair treatment: which requires impartiality, confidentiality, and transparency at all stages of the process.
- 6.2. Accessibility: to be accessible there must be broad public awareness about Council's policies and procedures and a range of contact options.
- 6.3. Responsiveness: this will be achieved by providing sufficient resources, well trained employees and ongoing review and improvement of Council systems.
- 6.4. 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.



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- 6.5. Integration of different areas of Council where the matter under review overlaps functional responsibilities.

7. DECISIONS SUBJECT TO REVIEW

- 7.1. Decisions of:
- 7.1.1. The Council;
 - 7.1.2. Employees of the Council; and
 - 7.1.3. Other persons acting on behalf of the Council,
- may be subject to review under this Procedure.
- 7.2. The nature of this review is a merits-based review which could lead to the original decision being affirmed, varied or revoked.
- 7.3. Not all actions by Council, Council employees or other person acting on behalf of Council will be a decision.
- 7.4. Actions taken during the process of decision-making (i.e. investigations, requests for further information, internal consideration of the matter or referral of the matter to an external adviser) are not decisions.
- 7.5. A decision is made when a matter, issue or query is actually determined.
- 7.6. Once a matter, issue or query is determined, the decision may be open to review in accordance with this Procedure.
- 7.7. Some decisions made by the Council, a Council employee or on behalf of the Council are subject to review or appeal processes set out in legislation. This Procedure cannot override or operate inconsistently with these statutory processes.
- 7.8. Where legislation provides for the review of, or appeal from, a type of decision, a decision of that type will not be reviewed under this Procedure e.g.:
- 7.8.1. objections to valuations made by the Council;
 - 7.8.2. appeals against orders made pursuant to section 254 of the *Local Government Act 1999*;
 - 7.8.3. appeals against the issuing of litter abatement notices under the *Local Nuisance and Litter Control Act 2016*;
 - 7.8.4. appeals against destruction and control orders issued under the *Dog and Cat Management Act 1995*;
 - 7.8.5. review of an expiation notice under the *Expiation of Offences Act 1996*;
 - 7.8.6. external review processes under the *Planning, Development and Infrastructure Act 2016* and the *Freedom of Information Act 1991*.



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- 7.9. Where legislation specifically excludes a type of decision from review either expressly or by necessary implication, this procedure cannot operate inconsistently with that legislation.
- 7.10. A review under this Procedure cannot vary or revoke a decision which has operative effect under legislation from the time the decision is made. (for example, some development approvals under the *Planning, Development and Infrastructure Act 2016* are intended to have operative effect from the time the decision is made and are not capable of being varied or revoked by Council).
- 7.11. Where legislation specifically provides for an internal review process, that process will apply rather than the process set out in this procedure (e.g. internal review of a determination under the *Freedom of Information Act 1991* or withdrawal of an expiation notice issued by the Council under section 16 of the *Expiation of Offences Act 1996*).

8. WHO CAN APPLY FOR A REVIEW

- 8.1. A person with a sufficient interest in a decision of the Council, a Council employee or person acting on behalf of the Council, may make a written application for a review of that decision.
- 8.2. An application for a review of a decision must be made within six (6) months of the decision being made (unless a longer period for submitting a particular application is approved by Council).
- 8.3. A person does not have to be the direct subject of a decision to have a sufficient interest in the decision to seek a review under this procedure.

9. INTERNAL REVIEW CONTACT OFFICER

- 9.1. The Chief Executive Officer, or an Internal Review Contact Officer (the “IRCO”) appointed by the CEO is the initial point of contact for all applicants/applications for a review of a Council decision.
- 9.2. The role of the CEO or Internal Review Contact Officer is to:
 - 9.2.1. 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;
 - 9.2.2. acknowledge the receipt of the application;
 - 9.2.3. maintain a register of all applications for review received and the outcomes of the applications;
 - 9.2.4. outline the timeframes involved and the action to be taken in the first instance;
 - 9.2.5. undertake a preliminary investigation to determine what actions have already been taken to try to resolve the matter;
 - 9.2.6. keep the applicant informed of progress;
 - 9.2.7. ensure adequate records are maintained;
 - 9.2.8. report to Council at prescribed intervals on all applications lodged for review.



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- 9.3. All applications are to be referred to the CEO or IRCO immediately, including meeting with the applicant or transferring a telephone call when contact is first made.
- 9.4. A person seeking review of a Council decision who attends at the Council's offices personally or by phone should be referred to the CEO or IRCO. The CEO or IRCO will discuss this Procedure with the person and indicate that an application for review must be lodged in writing.

10. ASSISTANCE WITH APPLYING FOR A REVIEW

- 10.1. To ensure equitable access to reviewing a Council decision, assistance will be provided as needed or on request of persons applying for a review of decision.
- 10.2. Assistance may include documenting the reasons for the review in writing on behalf of the applicant when circumstances warrant; access / arrangements for interpreters, aids or advocates; or other assistance as requested.

11. FORM OF APPLICATION

- 11.1. An application for review must be in writing and set out the reasons for applying for the review (that is, why the applicant believes that the decision is wrong).
- 11.2. An application for review may also include additional, relevant information or evidence to support the application.
- 11.3. There is a fee 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.

12. COUNCIL RESPONSE TO AN APPLICATION

- 12.1. The CEO or IRCO is responsible for:
 - 12.1.1. Determining whether or not the decision is subject to a review under this procedure;
 - 12.1.2. working in conjunction with the CEO or appropriately delegated officer to determine how the review will be handled;
 - 12.1.3. advising the applicant of the process to be undertaken and the time of the next contact; and
 - 12.1.4. ensuring the application is properly lodged and assigned.
- 12.2. 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.
- 12.3. Council will endeavour to ensure that a review of the original decision will be completed within twenty-one [21] business days.
- 12.4. However, if the decision is to be reviewed by Council, or an external investigator there may be delays caused by meeting cycle timelines.



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- 12.5. In more complex cases, a review may take longer.
- 12.6. The applicant will be regularly informed of progress, either by email, letter or telephone.

13. APPLICATIONS FOR A REVIEW OF THE IMPACT OF RATES OR SERVICE CHARGES

- 13.1. 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.
- 13.2. Where circumstances warrant, Council will consider financial relief or the granting of concessions in line with the provisions of the *Local Government Act 1999* and Council's rate relief policies

14. REFUSING AN APPLICATION

- 14.1. A Council, or a person assigned to consider the application, is entitled to refuse to consider an application for review if –
 - 14.2. the application is made by an employee of the Council and relates to an issue concerning their employment; or
 - 14.3. it appears that the application is frivolous or vexatious; or
 - 14.4. the applicant does not have a sufficient interest in the matter.
 - 14.5. the Council, or person assigned to consider the application is satisfied that 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
- 14.6. Refusing an application for review will not be done lightly and reasons for the refusal will document the evidence on which a refusal is based.
- 14.7. All requests for review relating to matters referred to the Local Government Association Mutual Liability Scheme (the "LGAMLS") for decision in respect to a claim or potential claim against the Council or in response to a threat of legal action against the Council may be referred to the LGAMLS and not dealt with by Council directly.

15. UNDERTAKING A REVIEW

Assignment of Applications for Review

- 15.1. The Elected Council will be the reviewer:
 - 15.2. when the decision being reviewed was made by a Committee of the Council or the Chief Executive Officer
 - 15.3. when the decision relates to civic and ceremonial matters
 - 15.4. in other circumstances as determined by the Chief Executive Officer or resolution of the Council
- 15.5. Where the decision is a decision of the Elected Council, the reviewer will be an external person or body who will report the outcome of the review to the Council.



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- 15.6. The Council will consider the recommended outcome of the review and determine whether to affirm, vary or revoke the reviewed decision.
- 15.7. Where the Elected Council is not the reviewer, a reviewer will be chosen from the following:
 - 15.7.1. Chief Executive Officer
 - 15.7.2. A panel comprised of Senior Staff
 - 15.7.3. An expert or panel of experts external to the organisation
- 15.8. In determining a reviewer, the level at which the decision was originally made will be taken into account, as will the nature of the decision.

16. ROLE OF THE REVIEWER

- 16.1. The reviewer will undertake a merits review of the decision.
- 16.2. The reviewer will consider all the information and material which were available to the original decision-maker and any additional relevant information or material provided or become available during the course of the review.
- 16.3. The reviewer will 'stand in the shoes' of the original decision-maker and determine if the decision was appropriate on the basis of the relevant circumstances and available information and materials.

17. PROVIDING PROCEDURAL FAIRNESS

- 17.1. The reviewer will observe the principles of procedural fairness (also called natural justice) when undertaking the review.
- 17.2. Put simply, procedural fairness involves:
 - 17.2.1. Giving an applicant a right to put forward materials and information in support of the application for review;
 - 17.2.2. Ensuring that an applicant is informed of the proposed outcome of the review, and has the opportunity to make submissions to the reviewer on the outcome and have these submissions taken into account; and
 - 17.2.3. Ensuring that the reviewer does not have a bias or perceived bias or personal interest in respect of undertaking the review.

18. PROVIDING REASONS

- 18.1. 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:
 - 18.1.1. A decision is not in accordance with a Council policy;



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- 18.1.2. A decision is likely to detrimentally affect rights or interests of individuals (or organisations) in a material way; or
- 18.1.3. Conditions are attached to any approval, consent, permit, licence or other authorisation.

19. OUTCOME OF REVIEW

- 19.1. Where the reviewer is the elected Council, the elected Council will determine whether to affirm, vary or revoke the original decision after considering the recommendation of the external body or Chief Executive Officer.
- 19.2. 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.
- 19.3. If the reviewer does not have a delegation enabling the making of the decision, then the reviewer should report the outcome of the review to the elected Council or the officer with the necessary delegation for a determination as to whether the decision should be affirmed, varied or revoked.
- 19.4. Where the reviewer is an external person or body then the reviewer should report the outcome of the review 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.

20. RECORDS MANAGEMENT

- 20.1. All documents, and information must be retained and stored in accordance with Council's Records Management protocols as required by Section 125 of the *Local Government Act 1999*.
- 20.2. All applications must be recorded in Council's records management system in such a way that the information can also be analysed for service improvement opportunities.
- 20.3. 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.

21. AVAILABILITY

- 21.1. This Procedure is available free of charge on the Council's Website: www.southernmallee.sa.gov.au
- 21.2. A printed copy of the Procedure may be purchased from the Principal Council Office, Day Street, Pinnaroo, upon payment of a prescribed fee in accordance with Council's Schedule of Fees and Charges.

22. REVIEW

This Procedure will be reviewed every four (4) years or more frequently if legislation or Council requires.



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23. ADOPTION & AMENDMENT HISTORY

The table below sets out the adoption, review and amendment history of the Procedure.

Version No:	Issue Date:	Authorised by:	Description of Change:	Minutes Reference:
1.0	27 January 2016	Council	Council adopted Internal Review of a Council Decision Policy and Procedure	16 / 0116
2.0	16 January 2024	Council	Significant amendments and re-wording made	Ordinary Council -20 December 2023