

	<h2 style="text-align: center;"><i>Internal Review of a Council Decision Procedure</i></h2>
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Applicable Legislation:	Local Government Act 1999
Related Policies or Documents:	Public Interest Disclosure Procedure General Complaints Policy Request for Service Policy Rating and Rebate Policy Right of Review: <i>An audit of Local Government Internal Review of Council Decisions Procedures Nov 2016 (Ombudsman SA)</i>
Associated Forms:	Application for a Decision Review
Responsible Manager:	Chief Executive Officer
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Internal Review of a Council Decision Procedure

1. Preamble

- 1.1. Kangaroo Island 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.
- 1.2. Council, its committees, staff and contractors make decisions every day which impact on members of the community. It is imperative that these decisions are fair, objective and subject to review. Kangaroo Island Council is committed to open, responsive and accountable government. This includes providing processes by which citizens adversely affected by a decision of Council can have their grievances considered.
- 1.3. This procedure provides a fair, consistent and structured process for any party dissatisfied with a decision which has been made by Council or its agents.

2. Purpose

- 2.1. The purpose of this procedure 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).
- 2.2. This Procedure is required by section 270(1) of the *Local Government Act 1999* and forms part of the Council's processes for dealing with complaints.
- 2.3. An internal review of a Council decision will examine the correctness of the procedures followed in making the decision and, in accordance with this procedure, may also examine the merits of the decision itself.

3. Scope

- 3.1. This Procedure will apply to all applications or requests for review of a Council decision, except for where an alternative statutory process for a review or appeal exists in other legislation.
- 3.2. Examples of other legislation containing statutory review or appeal processes include (but are not limited to):
 - a. Appeal processes under the *Planning, Development and Infrastructure Act 2016*
 - b. External or internal reviews of decisions made under the *Freedom of Information Act 1991*
 - c. A decision to issue an expiation notice under the *Expiation of Offences Act 1996*
 - d. Reviews of prohibition, destruction or control orders made under the *Dog and Cat Management Act 1995*
 - e. Reviews of orders made under Section 254 of the *Local Government Act 1999*
 - f. Appeals against litter or nuisance abatement notices under the *Local Nuisance and Litter Control Act 2016*
- 3.3. Decisions made pursuant to Section 75G of the *Local Government Act 1999* are not included within the scope of this Procedure.

- 3.4. Applications for a review of *the impact that any declaration of rates or services charges may have had on ratepayers*, will be dealt with promptly, and if appropriate under Council's Rating and Rebate Policy.
- 3.5. 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.

4. Definitions

For the purposes of this procedure the following definitions apply:

- 4.1. **Act** means the *Local Government Act 1999*
- 4.2. **Applicant** is a person who lodges a request for the review of a decision
- 4.3. **CEO** means the Chief Executive Officer of the Kangaroo Island Council.
- 4.4. **Council** refers to the Kangaroo Island Council
- 4.5. **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.
- 4.6. **Decision of Council or Council decision or decision** (when used in the context of the purpose of the procedure) 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. A **frivolous** request for a review of a decision includes, but is not limited to, requests that have no serious purpose or value or based on inaccurate facts.
- 4.8. **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.
- 4.9. **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.
- 4.10. 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. Procedure

5.1. Applying for a review

- 5.1.1. 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 application for a review of that decision.
- 5.1.2. 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 or other statutory review

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

5.1.3. A formal request for a review of a decision must:

- a. Be in writing, ideally using the Application for Decision Review form (attached to this Procedure)
- b. Be accompanied by the prescribed application fee of \$20.00.
- c. 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 Council and this procedure will be read accordingly)
- d. Provide full details of the decision for which the applicant is seeking a review (including how the decision impacts on their rights and/or interests) and set out clearly and succinctly the reasons for applying for the review.
- e. Be lodged within six (6) months of the original decision being made (with discretion provided to the CEO)

5.1.4. Council may allow by way of a formal decision, an application to be made more than six (6) months after the making of the reviewable decision in appropriate cases.

5.1.5. Council (or its delegate) may, as it thinks fit, reduce, waive or refund (in whole or part) the prescribed fee.

5.2. 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. Where necessary, access should be provided to interpreters, aids or advocates to assist applicants.

5.3. Acknowledging an application

5.3.1. The CEO (or their delegate) will formally acknowledge all requests for a review of a Council decision within (5) working 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.

5.3.2. The CEO (or their delegate) will consider all requests for a review and may refuse to assess such an application pursuant to section 270(4) of the Act if:

- a. The request is made by an employee of the Council and relates to an issue concerning the employee's employment
- b. It appears that the request is frivolous or vexatious
- c. the applicant does not have a sufficient interest in the matter - this will be determined on a case-by-case basis

- d. the council or person (as the case requires) 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.

5.4. Undertaking a review

5.4.1. Applicants will be treated equally, in accordance with good administrative practice. Council procedure area designed to ensure that:

- a. Every applicant has the opportunity to make an application for review of a decision covered by this procedure
- b. An unbiased assessment is undertaken
- c. 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
- d. Decisions are based on sound evidence
- e. Applicants receive information about the outcome of the review
- f. Applicants will be afforded procedural fairness

5.4.2. The CEO will determine the most appropriate officer or external advisor (the reviewing officer) to undertake a review after taking into account the information supplied at the level within the organisation at which the decision was made.

5.4.3. The CEO may appoint another Council Officer as the reviewing officer such as a Director, Senior Officer or Manager, who was independent of the original decision,

5.4.4. 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.

5.4.5. 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 will also be referred to the Elected Council. The CEO may also decide to refer a review of a Council decision to the elected Council where:

- a. The decision being reviewed is in the opinion of the CEO likely to be of interest to the wider community
- b. The CEO otherwise considers, in their discretion that the matter warrants consideration by the Council.

5.4.6. 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 and further correspondence received during the review about the decision for determination.

5.4.7. A reviewing officer will:

- a. 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)
- b. Maintain a register of all applications for internal review lodged and the outcome
- c. acknowledge the receipt of the application (where this has not been done previously by the CEO)
- d. outline the timeframes involved and the action to be taken in the first instance
- e. undertake a preliminary investigation to determine what (if any) actions have already been taken to try to resolve the matter
- f. keep the applicant informed of progress
- g. ensure that adequate records of the review process and findings are produced and maintained
- h. Where matters are referred to the Council itself for consideration, provide a final report(s) to Council at the conclusion of the process for consideration

5.4.8. The reviewing officer will assess the application, determine the appropriate action and arrange for the determination to be communicated to the applicant.

5.4.9. 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:

- a. The decision maker had the power (delegation) to make the decision
- b. All matters relevant to the decision were considered and were not influenced by extraneous factors
- c. The process was free from bias
- d. The decision maker did not exercise a discretion or power in bad faith or for improper purpose
- e. the decision was made of facts and evidence
- f. the decision was reasonable
- g. any relevant legislation, policies or procedures were considered
- h. the decision maker did not exercise a discretionary power at the direction of another person

5.4.10. Where a request for review has been referred to Council, the applicant will be advised of the date that the report will be presented to Council and will be given the opportunity to provide a written or verbal submission in relation to the report for Council consideration.

- 5.4.11. In most cases Council will use its best endeavours to ensure that requests for review will be considered and determined within 20 business days. However, in more complex cases, or if the decision is to be reviewed by Council, Committee, or an external provider a review may take longer.

5.5. Applications under this Procedure relating to Rates

- 5.5.1. This procedure applies to applications that relate to the impact that any declaration of rates or service charges may have had on ratepayers.
- 5.5.2. Council or the CEO will give priority to such applications and will consider if appropriate, be addressed through the provision of relief or concessions under the Act and Council's Rating and Rebate Policy.

5.6. Providing 'Procedural Fairness'

- 5.6.1. Those that may be affected by a decision must be accorded procedural fairness, which includes the principles of natural justice.
- 5.6.2. As part of the review process, any party whose rights or legitimate interests will be affected by a decision, will have the opportunity to make a written submission expressing their point of view and responding to issues raised, including the provision of any relevant information. This may take the form of being invited to make an initial submission to the person assisting with the review and/or being invited to comment on provisional findings of the review before a final decision is made.
- 5.6.3. '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 (ie. must not have a bias or perceived bias).
 - c. Acting only on proper evidence that is capable of proving the case.
- 5.6.4. The applicant will be informed in writing of the outcome of the review.

5.7. Outcome of a review

- 5.7.1. Where the reviewer is the elected Council, the Council should determine whether to affirm, vary or revoke the original decision.
- 5.7.2. 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 of the recommendations given by the reviewing officer to affirm, vary or revoke the decision.

5.8. Remedies

- 5.8.1. Where the review of a decision under this procedure results in the applicant's grievance is upheld, an appropriate remedy will be determined that is reasonable in all the circumstances.

- a. The remedy chosen will be proportionate and appropriate to the outcomes of the review and may include (but is not limited to): Varying or revoking the original decision;
- b. Returning the situation to its original status (such as not pursuing the construction of something, not implementing the original decision etc)
- c. The provision of an explanation;
- d. Offering to enter into formal mediation;
- e. The offering of an apology or admission of fault;
- f. A change to Council policy, procedure or practice; or
- g. A correction to Council records, noting this does not necessarily mean deleting records.

5.8.2. Where appropriate, the findings of an internal review will be considered in making improvements to Council's existing policies, procedures and practices.

5.8.3. Nothing in this procedure prevents an applicant from making a complaint to the Ombudsman under the Ombudsman Act 1972 at any time during or after any of the steps in the process.

5.9. Delegations

5.9.1. Council acknowledges that the CEO may sub-delegate matters related to this Procedure to staff or other persons employed or engaged by Council.

5.9.2. The CEO has delegation to make any legislative formatting or other minor changes to the Procedure during its period of currency.

5.10. Annual Reporting

- a. In accordance with section 270(8), *Local Government Act 1999*, the Council on an annual basis, provide information in its Council's Annual Report that relates to: The number of applications for review made under this section;
- b. The kinds of matters to which the applications relate;
- c. The outcome of applications made under this section, and;
- d. Such other matters as may be prescribed by the Regulations under this Act.

6. Availability of the Policy

- 6.1. This Policy will be available for inspection on the Council's website:
www.kangarooisland.sa.gov.au
- 6.2. Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.

SIGNED:



Chief Executive Officer

Date: 12 March 2024

History:

Date Reviewed:	Version:	Reason for Amendment:
20 September 2010	Version 1	Adopted by Council. Minute Book Reference 3.6.1
28 September 2011	Version 2	Amendment to definition and measures, format and layout
04 September 2014	Version 3	Amendment to include new Council format.
10 November 2015	Version 4	Full review and inclusion of new Council Logo.
14 March 2017	Version 5	Amendment as requested by the SA Ombudsman
14 December 2021	Version 6	New template and full procedure review including new provisions under the Local Government Reform.
12 March 2024	Version 7	Comprehensive review of procedure

7. APPLICATION FOR DECISION REVIEW

In accordance with Section 270 of the *Local Government Act 1999*

Applicant's Name:

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Applicant's Address:

.....

Postal Address (if different):

.....

Telephone:

(home).....(mobile).....

Email Address:

I request the following decision(s) to be considered for review:

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.....
.....

Previous contact person in this matter:

Details of prior actions taken to resolve this matter:

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.....
.....

Reasons for requesting decision review:

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.....
.....
.....

Additional/Supporting documents attached? Yes / No

Applicant's Signature:

Date:

Office Use Only Received by:.....Fee paid: \$...... Date:

Referred to:

Applicant Acknowledged and provided copy of Procedure?: Yes / No Date: