# POLICY 2.27
# Governance
## Internal Review of a Council Decision Procedure

**Version:** 2 **| Next Review:** November 2030

DISTRICT COUNCIL of TUMBY BAY

### 1. INTRODUCTION

The District Council of Tumby Bay (the Council) is committed to transparent, accountable and customer-focused decision-making.

This Procedure supports that commitment by providing a fair, accessible and consistent process for the internal review of Council decisions where a person is dissatisfied with an outcome that affects them.

The Procedure forms part of Council's broader complaint handling framework and ensures that decisions are subject to appropriate scrutiny, reconsideration and continuous improvement where necessary. It is intended to:

- reinforce public confidence in Council decision-making,
- promote administrative fairness and procedural integrity, and
- provide a structured mechanism for resolving concerns at a local level before external review is sought.

### 2. POLICY OBJECTIVES

The Internal Review of a Council Decision Procedure Policy (the 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.

The Procedure sets out:

a) the decisions which are subject to review,

b) the method of applying for a review,

c) the review process,

d) record keeping requirements, and

e) the notification of progress and timeframes for completion of a review.

The purpose of the Procedure is to ensure that:

- Every person has the opportunity to make an application for review of a decision.
- An unbiased review is undertaken.
- Outcomes of a review are based on sound evidence.
- Applicants receive information about the outcome of the review.

### 3. LEGISLATIVE REQUIREMENTS

This Policy has been developed in accordance with section 270 of the *Local Government Act 1999*, which provides that Council must have a Policy that addresses at least the following matters:

- the manner in which an application for review may be made,
- the assignment of a suitable person to reconsider a decision under review,

- the matters that must be referred to the Council itself for consideration or further consideration,
- in the case of applications that relate to the impact that any declaration of rates or service charges may have had on ratepayers – the provision to be made to ensure that these applications can be dealt with promptly and, if appropriate, addressed through the provision of relief or concessions under this Act,
- the notification of the progress and outcome of an application for review, and
- the time frames within which notifications will be made and procedures on review will be completed.

Pursuant to Section 270(7) of the Act, a formal request for review does not prevent a complaint being made to the Ombudsman at any time.

## 4. KEY PRINCIPLES

Council, its committees, staff and contractors make decisions every day that impact on members of the community. These decisions should be fair, objective and subject to review.

This Procedure is based on five key principles which are fundamental in the way Council approaches reviews of decisions. These principles are:

4.1 *Fair treatment* which requires impartiality, confidentiality, equal treatment and transparency at all stages of the process.

4.2 *Accessibility* which requires broad public awareness of the Council's policies and procedures and range of contact options.

4.3 *Responsiveness* which requires sufficient resources, well-trained staff and the ongoing review and improvement of the Council's systems and processes.

4.4 *Efficiency* which requires timely and effective resolution of reviews, while ensuring reviews are dealt with at a level that reflects the complexity.

4.5 *Integration* which requires collective input from different areas of Council where the matter under review overlaps functional responsibilities.

## 5. CUSTOMER COMPLAINTS

The Council has a three-tier process for managing complaints, with the processes for each tier are outlined in Council's Requests for Services and Complaint Handling Policy.

- Tier 1 - Immediate Response to the Complaint
- Tier 2 - Escalation of the Complaint
- Tier 3 - Internal Review of a decision

Internal reviews of Council decisions will be undertaken in accordance with this Procedure. The Procedure enables the Council to reconsider the evidence relied on to make the original decision and additional available evidence if relevant. This Procedure is 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 a review should only be made once the other two tiers under the Requests for Services and Complaint Handling Policy have been undertaken as these may resolve the matter more efficiently.

As the third tier in Council's complaints handling process, reviews under this Procedure will apply when matters cannot be resolved satisfactorily under the previous two tiers.

## 6. DECISIONS SUBJECT TO REVIEW

The Council will review certain types of decisions in accordance with this Procedure. Decisions which may be subject to a review under this Procedure are decisions of:

- the Council,
- employees of the Council, and
- other persons acting on behalf of the Council.

Any reference to a decision in this Procedure refers to a decision of any of the above.

The nature of a review under this Procedure is a merits review which could lead to the original decision being either affirmed, varied, or revoked.

Not all actions by the Council, employees of the Council or other person acting on behalf of the Council will be a decision. For example, actions taken during the process of decision-making (i.e. investigations, requests for information, internal consideration of the matter or referral of the matter to an external adviser) are not decisions; a decision is made when a matter, issue or query is determined. Once a matter, issue or query is determined, the decision may be susceptible to review in accordance with this Procedure.

Some decisions are subject to review or appeal processes as set out in legislation. This Procedure cannot override or operate inconsistently with these statutory processes. Consequently, where legislation provides for the review or appeal of a type of decision, a decision of that type will not be reviewed under this Procedure. Examples include:

a) objections to valuations made by the Council under the Act,

b) reviews of orders made by the Council under the Act,

c) appeals against the issuing of litter abatement notices under the *Local Nuisance and Litter Control Act 2016*,

d) appeals against destruction and control orders issued under the *Dog and Cat Management Act 1995*,

e) review of an expiation notice under the *Expiation of Offences Act 1996*,

f) external review processes under the *Freedom of Information Act 1991* (the FOI Act), and

g) reviews and appeals under the *Planning, Development and Infrastructure Act 2016* (the PDI Act).

Where legislation specifically excludes a type of decision from review either expressly or by necessary implication, this Procedure cannot operate inconsistently with that legislation.

Similarly, a review under this Procedure could not 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 PDI Act are intended to have operative effect from the time the decision is made and are not capable of being varied or revoked by Council.

Where legislation specifically provides for an internal review process, that process will apply rather than the process set out in this Procedure. For example, internal review of a determination under the FOI Act or withdrawal of an expiation notice issued by the Council under the Expiation of Offences Act.

## 7. APPLYING FOR A REVIEW

Any person with a sufficient interest in a decision may apply for a review of that decision.

A person who is not the direct subject of a decision may be considered to have a sufficient interest in a decision to seek a review under this Procedure. For example, a person may have a sufficient interest in a decision regarding the number of dogs which may be kept within a neighbour's property.

An application for review must be made within 6 months of the making of the decision of which review is sought. The Council (or delegate) may allow an application for review to be made more than 6 months after the making of the decision of which the review is sought in appropriate cases.

An application for review must be accompanied by the prescribed fee. The prescribed fee may be reduced, waived or refunded as the Council (or delegate) considers fit.

An application for review must be made in writing and set out the reasons for applying for the review. Applications for review may be made via:

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| Email | dctumby@tumbybay.sa.gov.au |
| Post | PO Box 61, Tumby Bay SA 5605 |

For the purposes of this Procedure, a person applying for a review of a decision is known as the applicant.

Although Council can be expected to have information and material relevant to the decision under review, the applicant may also include additional information or evidence relevant to the decision to support the application for review.

## 8. INTERNAL REVIEW CONTACT OFFICER

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

The role of the IRCO is to:

8.1 explain the Procedure to the applicant, and

8.2 explore any alternative options to resolve the matter, such as alternative dispute resolution prior to an application for review,

8.3 acknowledge the receipt of an application for review,

8.4 outline the timeframes involved and the action to be taken in the first instance,

8.5 undertake a preliminary investigation to determine what actions have already been taken to try to resolve the matter,

8.6 keep the applicant informed of progress,

8.7 ensure adequate records are maintained, and

8.8 report to Council at prescribed intervals on all applications lodged for review.

All applications for review are to be referred to the IRCO immediately.

## 9. ASSISTANCE WITH APPLYING FOR REVIEW

It is essential that persons are not excluded from lodging an application for review because of any difficulties they may have representing themselves. All Council staff are to offer assistance where appropriate and provide it on request, including assistance in documenting the reasons for the review when circumstances warrant.

## 10. RESPONSE TO AN APPLICATION

The IRCO is responsible for:

10.1 determining whether or not the decision is subject to review under this Procedure,

10.2 working in conjunction with the appropriately delegated officer to determine how the review will be handled,

10.3 advising the applicant of the process to be undertaken,

10.4 ensuring the application is properly lodged and assigned, and

10.5 keeping the applicant regularly informed of progress, either by email, letter or telephone.

Applications for review of a decision must be responded to within 10 business days, acknowledging receipt and advising of the expected timeframe for dealing with the matter.

Council will endeavour to ensure that a review of a decision is completed within 21 business days.

If the decision is to be reviewed by the elected Council, a Council committee or an external person or body reporting to the elected Council or a Council committee, there may be delays caused by meeting cycle timelines, and in more complex cases, a review may take longer than 21 days.

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

If the 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 accordance with the provisions of the Act and Council's rates rebates and hardships policies.

## 12. UNDERTAKING A REVIEW

For the purposes of this Procedure, the person(s) or body undertaking a review of a Council decision is known as the reviewer.

The elected Council will be the reviewer:

- when the decision being reviewed was made by a committee of the Council or the CEO,
- when the decision relates to civic and ceremonial matters, and
- in other circumstances as determined by the CEO or resolution of the Council.

Where the decision is a decision of the elected Council, the Council may be assisted by an external person or body who will report the outcome of the review to the Council.

The Council will consider the outcome of the review and determine whether to affirm, vary or revoke the reviewed decision.

Where the elected Council is not the reviewer, a reviewer will be a legal practitioner or any other suitably experienced and qualified external person or body appointed by the CEO, which may be an employee of another council.

The EPLGA External Review Committee
https://eplga.com.au/sites/eplga/media/pdf/committees-and-working-groups/terms-of-reference-review-of-decisions-panel-version-3.pdf

*12.1 Role of the reviewer*

The reviewer will undertake a merits review of the decision.

The reviewer will consider all documents and information that were available to the original decision-maker, and any additional relevant documents and information that has been provided or become available during the review.

The reviewer will 'stand in the shoes' of the original decision-maker and determine the appropriate decision on the basis of the relevant circumstances and available information and materials.

*12.2 Providing 'Procedural Fairness'*

The reviewer will observe the principles of procedural fairness (also called 'natural justice') when undertaking the review. To observe the principles of procedural fairness:

a) an applicant is entitled to supply information and materials in support of the application for review,

b) an applicant will be informed of the proposed outcome of the review, have the opportunity to make submissions to the reviewer on the proposed outcome and have these submissions considered,

c) the reviewer must not have a bias or perceived bias in respect of undertaking the review, and

d) costs and expenses associated with the appointment and work of the reviewer will be shared equally between the Council and the other party.

*12.3 Providing reasons*

While there is no statutory requirement to give reasons for a decision, Council will provide reasons for the outcome where:

a) a decision is not in accordance with a Council policy or other relevant document,

b) a decision is likely to detrimentally affect rights or interests of individuals or organisations in a material way, or

c) conditions are attached to any approval, consent, permit, licence or other authorisation.

*12.4 Refusing an application for review*

Council, or the 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 (without merit) or vexatious (intended to harass or misuse the process), or

c) the applicant does not have a sufficient (legitimate or personal) interest in the matter and therefore the issue is not appropriate for formal consideration.

Refusing an application for review will not be done lightly and reasons and evidence on which a refusal is based (see clause 12.3) will be documented and reasons provided to the applicant.

Where a matter has been referred to the Local Government Association Mutual Liability Scheme (LGAMLS) in respect to a claim or potential claim against the Council or in response to a threat of legal action against the Council, an application for review of a decision in connection with that claim or action (including the decision to refer the matter to the LGAMLS) will be regarded as vexatious.

*12.5 Exclusions from Review*

In accordance with section 270 of the *Local Government Act 1999*, the Council's policies, practices and procedures do not provide for the review of the following matters:

a) *Council Member Behaviour Complaints*

Any decision to refuse to deal with, or to take no further action in relation to, a complaint about a Council member made under sections 262A to 262E of the Act. (These sections establish the framework for managing complaints about the conduct of Council members, including how complaints are received, assessed and, where appropriate, investigated.)

b) *Ombudsman Matters*

Any decision relating to, or arising from, a recommendation made by the Ombudsman.

c) *Matters Previously Considered*

Any matter that has already been the subject of:

- an internal review by the Council, or
- an investigation, inquiry or review conducted by another authority.

Where a matter falls within these exclusions, the Council officer assigned to assess the application may determine that no review will be undertaken.

A person who is dissatisfied with such a decision may make a complaint to the Ombudsman.

*12.6 Outcome of review*

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

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 a delegation enabling the making of the 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 then the reviewer should report the outcome of the review to the Chief Executive Officer, IRCO or other appropriate employee for reporting 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.

*12.7 Notification of Outcome*

The IRCO will notify the applicant of the outcome of the review upon completion of the review process.

## 13. REPORTING

The IRCO will submit a report to Council annually about section 270 applications for review of a decision, including:

- the number of applications for review made under this Procedure,
- the types of matter to which the applications relate,
- the outcomes of applications under this Procedure, and
- any other matters as may be prescribed by the regulations.

The IRCO will also report on how the outcomes have been used to improve Council's customer service, policies, procedures and practices.

This information, as specified in section 270(8), will be included in Council's Annual Report.

## 14. RECORDS MANAGEMENT

All documents and information related to the review must be retained and stored in accordance with Council's records management policies and procedures.

All applications must be recorded in Council's records management system in such a way that the information can also be analysed for opportunities to improve services.

## 15. POLICY REVIEW & EVALUATION

In order to ensure Council continues to provide the best possible service for its customers, this policy will be subject to periodic evaluation and review. This Policy will be reviewed at least every four (4) years or as required by legislative change.

## 16. AVAILABILITY OF POLICY

This Procedure will be available for inspection at the Council's offices during ordinary business hours and via the Council's website www.tumbybay.sa.gov.au. 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.

## 17. FURTHER INFORMATION

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| Related Policies | Policy 2.26 - Requests for Services and Complaint Handling |
| Related Procedures | Complaints Handling Procedure<br>Requests for Service Procedure<br>Protocol – Ombudsman Enquiry Procedure |

**AUTHORITY:** Adopted by Council: 22/10/2018 {Adopted under delegation}
Adopted by Council: 14/07/2026 {18c/72026}

**SIGNED:** 

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Responsible Officer

**DATED:** 14/07/2026