

Council Decisions Internal Review Procedure

Procedure Number	A6
Responsible Officer(s)	Chief Executive Officer
Procedure Adopted	September 2023
Next Review Date	September 2027
Minutes reference	2023/09-17
Applicable Legislation	<i>Local Government Act 1999; Ombudsman Act 1972.</i>
Related Policies	Customer Service Policy.
Related Procedures	Complaint Handling Procedure; Request for Service Procedure.

1. INTRODUCTION

- 1.1. The purpose of 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).
- 1.2. Wakefield Regional Council "Council" recognises the importance of transparency in Council decision-making and the need to provide fair, objective and consistent processes for the review of Council decisions.
- 1.3. In preparing this Procedure, Council has had regard to the guideline procedure developed by the South Australian Ombudsman as a result of the Local Government Internal Review of Council Decision Procedures in November 2016.
- 1.4. Nothing in this Procedure prevents a person from making a complaint to the Ombudsman at any time under the *Ombudsman Act 1972*.

2. PROCEDURE OBJECTIVE

- To demonstrate the accountability and responsibility of Council;
- To treat all parties involved fairly and equitably;
- To monitor and record all processes related to the review of Council decisions.

3. DEFINITIONS

For the purposes of this Procedure the following definitions apply:

Act means the *Local Government Act 1999*.

Applicant is a person who lodges a request for the review of a decision.

CEO refers to the Chief Executive Officer of the Wakefield Regional Council, including anyone for the time so being acting in that role.

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.

A **frivolous** request for a review of a decision includes, but is not limited to, requests that have no serious purpose or value.

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.

Process review is a review of the correctness of the procedures followed in making a decision.

Scheme for the resolution of disputes means a scheme established pursuant to section 271 of the Act.

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.

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.

4. PROCEDURE SCOPE

- 4.1. 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.
- 4.2. Examples of other legislation containing statutory review or appeal processes include (but are not limited to):
 - External review and appeal processes under the *Development Act 1993*
 - External or internal review of decisions made under the *Freedom of Information Act 1991*
 - A decision to issue an expiation notice under the *Expiation of Offences Act 1996*
 - Reviews of orders made under section 254 of the *Local Government Act 1999*
 - Reviews of prohibition, destruction or control orders made under the *Dog and Cat Management Act 1995*
 - Appeals against litter or nuisance abatement notices under the *Local Nuisance and Litter Control Act 2016*
- 4.3. 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.

5. LEGISLATIVE CONTEXT

- 5.1. There is a legal requirement for Council to establish procedures for the review of Council decisions. The following provisions of the Act apply to this Procedure:
 - 5.1.1. Section 270(1) states that a Council must establish procedures for the review of council decisions;

- 5.1.2. Section 270(2) states that the procedures must address certain criteria;
- 5.1.3. Section 270(2a) states that an application for a review must be made within 6 months of the making of the reviewable decision;
- 5.1.4. 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.

6. PROCEDURE STATEMENT

- 6.1. Council (including Committees, Employees of Council and a person acting on behalf of Council) makes decisions every day which impact on members of the community. It is important that these decisions are fair and reasonable. Equally, there should be an avenue for people to ask for reasonable reviews of Council's decisions.
- 6.2. An internal review of a Council decision is available under section 270(1) of the Act and this Procedure. Internal reviews provide a mechanism that enables the Council to reconsider the decision-making process and all the evidence relied on to make a decision, including new evidence if relevant. The Council will provide a fair, consistent and structured review process for any party dissatisfied with a Council decision. This Procedure does not and is not intended to exclude other rights and remedies available at law.
- 6.3. 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.
- 6.4. Internal reviews are an opportunity for the Council to review its own decision. While external help may be obtained to assist in a review, it is not an independent or external review process. External reviews of Council decisions are in the remit of the SA Ombudsman.
- 6.5. Council also has processes in place for dealing with customer complaints and requests for service. As a general rule, Council will encourage the use of these processes in the first instance as they may offer more immediate resolution of grievance. Council will attempt to resolve complaints about the actions of the Council, Employees of the Council, or other persons acting on behalf of the Council under its *Customer Complaints Policy*.
- 6.6. Reasonable requests for the provision of a service by the Council or for the improvement of a service provided by the Council are dealt with under the *Request for Services Policy*.
- 6.7. The formal internal review of a Council decision process is generally a last resort in the complaint handling process, and may also be used in situations which are not able to be resolved by other means. While Council encourages the use of other resolution mechanisms, it is an applicants right to use the formal internal review process in the first instance if that is their preference.
- 6.8. 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. However, as a general rule, the Ombudsman prefers that matters be addressed by Council in the first instance.
- 6.9. Although requests for review of Council decisions under this Procedure are generally initiated by other parties, the Council (including the CEO) may determine to handle a complaint or other grievance using the provisions of this Procedure where they feel that it provides a better avenue for resolution of the matter. Subsequent to doing so, the Council will consider that an internal review under this Procedure has already been carried out if the same matter is raised again by either the same or another party.

7. PROCEDURE

7.1. Making an application

The review of a Council decision commences at the point where a formal request for a review of a Council decision is received. Council Employees can help an applicant determine whether to make a request under this Procedure or other statutory review processes applicable to the matter at hand, but it remains a matter for the applicant to determine.

- A formal request for a review of a decision must:
 - Be in writing, ideally using the *Internal Review of Council Decisions Application* available on Council's website;
 - Accompanied by the prescribed application fee (see below);
 - Be addressed to the CEO, (or in the case where the matter is about a decision made by the CEO, the matter will be referred to the Mayor for consideration by Council Members and this Procedure be read accordingly);
 - 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;
 - Be lodged within six (6) months of the original decision being made (with discretion provided to the CEO to allow for a longer time limit to apply in particular cases. This is assessed on a case by case basis).
- There is a fee of \$20.00 (prescribed under legislation) payable on application for a review of a Council decision. Once an application has been 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.
- No one should be excluded from lodging an application for review because of any difficulties they may have in representing themselves. Council Employees 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.

7.2. Acknowledging an application

7.2.1. The CEO will formally acknowledge all requests for a review of a Council decision within five (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.

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

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

7.3. Undertaking the review

7.3.1. Applicants will be treated equally, in accordance with good administrative practice. Council's procedures are 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;
- 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;
- Decisions are based on sound evidence;
- Applicants receive information about the outcome of the review;
- Applicants will be afforded procedural fairness.

- 7.3.2. The CEO will assess all applicable requests for a review of a Council decision (except those which will be referred to Council Members) and determine what action, if any, should be taken (including whether an external investigation is necessary).
- 7.3.3. The CEO may elect to appoint another officer or external advisor for assessment and/or preparation of a report to assist in the review process. The person appointed to assist with the review must be independent of the original decision being reviewed so far as can be practicably achieved. 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.
- 7.3.4. 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 in accordance with this Procedure.
- 7.3.5. The CEO may also decide to refer a review of a Council decision to the elected Council where:
- The decision being reviewed relates to civic or ceremonial matters;
 - The decision being reviewed is in the opinion of the CEO likely to be of interest to the wider community;
 - The CEO otherwise considers, in their discretion, that the matter warrants consideration by Council.
- 7.3.6. 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 about the decision being reviewed.
- 7.3.7. 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's consideration.
- 7.3.8. In most cases, Council will use its best endeavours to ensure that requests for review will be considered and determined within 20 business days. In more complex cases, or if the decision is to be reviewed by Council, Committee or an external provider, a review may take longer. In the event that a review exceeds 20 business days, the applicant will be provided with periodic updates on the progress of the review until the review is finalised.
- 7.3.9. Except for in extremely limited circumstances, a merits review will be conducted. In those instances where a merits review will not be conducted, a process review will be undertaken and the applicant will be advised of this at the time the review is commenced.

7.4. Natural Justice

- 7.4.1. Those that may be affected by a decision will be accorded natural justice, which includes the principles of procedural fairness. As part of the review process, all parties with a known interest in the matter 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 making a final decision is made.

- 7.4.2. In undertaking a review, the CEO or Council will review the decision in question to ensure that the original decision maker complied with the following procedural requirements and made the best possible decision in the circumstances having regard to the following:
- The decision maker had the power to make the decision
 - The decision maker considered all matters which were relevant to the making of the decision at the time and did not take into account matters which were not relevant, as well as any additional relevant information or material provided by the applicant
 - The decision maker did not exercise a discretion or power in bad faith, for an improper purpose, or while subject to duress or the influence of another person
 - The decision maker had no conflict of interest, bias or perceived bias
 - The decision maker ensured that findings of fact were based on evidence
 - The decision was reasonable
 - The decision maker considered any relevant legislation, policies or procedures
- 7.4.3. The details of any request for review will be kept confidential in so far as it is necessary, reasonably practicable and appropriate for conducting an effective review process.
- 7.4.4. The applicant will be informed in writing of the outcome of the review (including where a determination is made that the decision under review will be upheld).
- 7.4.5. Adequate reasons will be recorded for all internal review determinations.

7.5. Applications under this Procedure relating to Rates

- 7.5.1. This procedure applies to all applications that relate to the impact that any declaration of rates or service charges may have had on ratepayers.
- 7.5.2. Council or the CEO will give priority to such applications and consider the impact of rates and services on ratepayers and the provisions available to ratepayers for rate relief or concessions as set out in the Act (e.g. remission or postponement of payment, issuing of fines and interest, particular land use categorisation).
- 7.5.3. Specific review mechanisms exist in the *Local Government Act 1999* to try the validity of a rate or service charge. This Procedure does not apply to such a decision.

7.6. Remedies

- 7.6.1. Where the review of a decision under this Procedure results in the applicant's contention(s) being upheld, an appropriate remedy will be determined that is reasonable in all of the circumstances.
- 7.6.2. The remedy chosen will be proportionate and appropriate to the outcome of the review and may include (but is not limited to):
- Varying or revoking the original decision
 - Returning the situation to its original status (such as not pursuing the construction of something, not implementing the original decision, etc.)
 - The provision of an explanation
 - Offering to enter into formal mediation
 - The offering of an apology or admission of fault

- A change to Council policy, procedure or practice
- The correction of Council records, noting this does not necessarily mean deleting records.

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

7.7. Other procedural matters

Where the Council or the CEO determines that a matter such as a complaint or other grievance should be dealt with as an internal review of a decision under this Procedure, the other party will be advised accordingly.

8. REVIEW

This Procedure shall be reviewed every 48 months, or more frequently if required by legislation or Council.

Document history:

Version	Adopted	Description of Change
1.0	October 2000 – Min 152	New Policy
2.0	December 2012 – Min 149	Policy completely revised to take into account recommendations of the LGA
	September 2014 – Min 69	Minor wording change for clarification purposes
	November 2014	Policy numbering system changed and the inclusion of this document history table
3.0	September 2016 – Min 71	Policy objectives heading. Removal of 'Assignment of application for review' reference
4.0	March 2017 – 2016/191	Inclusion of records management information; procedure update to include six month time limit on applications, reference to GPON
5.0	September 2023	Complete new document and name change from policy to procedure