

# Mayor Seeking Legal Advice Policy

Policy Number	A4
Responsible Officer(s)	Chief Executive Officer
Policy Adopted	April 2013
Last revised date	June 2022
Minutes reference	2022/06-14
Next review date	June 2026
Applicable Legislation	<i>Local Government Act 1999</i>

## 1. POLICY PRINCIPLE

Wakefield Regional Council is committed to good governance, including in the procurement of legal advice to support the sound operations of Council.

## 2. POLICY OBJECTIVE

This Policy is designed to set out Council's position in relation to the circumstances in which the Mayor is authorised to seek legal advice independently of the CEO.

## 3. LEGISLATION

Sections 6 to 8 inclusive of the *Local Government Act 1999* (the Act) sets out the role, functions and objectives of a Council. Section 58 and 59 of the Act set out the specific roles of a principal member (Mayor) and the roles of all members of councils.

Section 137 of the Act authorises a council to expend its funds, viz:

*"Subject to this or another Act, a council may expend its funds as the council thinks fit in the exercise, performance of discharge of its powers, functions or duties under this or other Acts."*

## 4. POLICY DETAIL

As a general rule, any legal advice obtained on behalf of a Council will occur through the Chief Executive Officer (CEO) or be authorised by the CEO through delegation or a Council resolution.

A CEO of a Council is responsible for the implementation of lawful Council decisions and for the overall administration and budget management of the Council. However, there may be limited circumstances where it is not appropriate or not possible for a Council to obtain legal advice through the CEO.

In circumstances in which it is not possible or appropriate for the CEO to seek legal advice, the Mayor ideally should seek a Council resolution to obtain legal advice. However, where this is not possible, the Mayor may seek the advice independently as set out below.

### 4.1 Urgent matters relating to a Council Meeting if the CEO is unavailable

While the CEO and senior staff have a comprehensive knowledge of Council meeting procedures, matters may arise from time to time which require an urgent legal opinion.

Where legal advice is required in the absence of the CEO and appropriate senior staff:

- a) The Mayor may seek legal advice in situations in which a response is required urgently, including for an imminent Council meeting or other urgent matter;
- b) Any legal advice obtained in this way will be reported to the Council at the earliest available meeting (which may be conducted 'in confidence' for this purpose under section 90(3)(h) of the Act);
- c) The legal advice will also be provided to the CEO at the earliest opportunity (unless this is not appropriate – see below).

#### 4.2 The legal advice relates to the CEO or the exercise of the CEO's powers

In circumstances where Council is to consider a matter related to the CEO (e.g. urgent CEO-employment related issues or where the Council is investigating a failure by the CEO to comply with a resolution of Council or where a matter relates to the exercise of a CEO's powers) and it is the view of the Mayor that the consideration of this matter by the Council should occur with the benefit of legal advice:

- a) The advice will be obtained as a matter of administrative necessity by the Mayor to ensure the legality of the Council's actions and decisions.
- b) The Mayor will keep the Council fully informed of any advice obtained on behalf of the Council and advise members of the advice received at the next available meeting;
- c) Where the Mayor has obtained the advice other than in accordance with a Council resolution Council should, as a matter of caution, retrospectively endorse the Mayor's decision to obtain the advice.

#### 4.3 Exceptional circumstances

Notwithstanding the above, the Council also understands that exceptional circumstances may arise, which require the Mayor to obtain legal advice outside of the parameters of this policy:

- a) in those circumstances, the Mayor may obtain the advice, but will be required to keep the Council fully informed of any such advice obtained on behalf of the Council, including providing reasons why it was required to be obtained;
- b) the Mayor will be required to advise members of the advice received at the next available meeting;
- c) subject to the reasons provided by the Mayor, the Council should, as a matter of caution, retrospectively endorse the Mayor's decision to obtain the advice.

### 5. RECORD KEEPING AND CONFIDENTIAL DOCUMENTS

Where the Mayor obtains legal advice relating to the CEO or the exercise of the CEO's powers, and it is not appropriate to provide that advice to the CEO, the advice must be placed in the records management system in such a way as to ensure that it cannot be accessed by the CEO. This procedure will also apply to other documents relevant to the matter which, in the opinion of the Council, should be kept confidential.

These restricted access records will be maintained in accordance with the *State Records Act 1997* and will remain subject to assessment as part of any relevant application made under the *Freedom of Information Act 1991*.

## 6. REVIEW

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

### Document history:

Version	Adopted	Description of Change
1.0	June 2011 – Min 263	New Policy.
2.0	November 2014	Policy numbering system changed and inclusion of this document history table.
3.0	September 2015 – Min 66	Policy objectives included.
4.0	March 2018	Major redrafting to include provision of legal advice to Council Members, addition of policy principle, new template.
5.0	June 2022	Major redraft following legislative reform.