

S0017- CARETAKER POLICY

Policy Type:	Statutory Policy
Responsible Department:	Office of the CEO
Responsible Officer:	Executive Manager
Related Policies and Procedures	<ul style="list-style-type: none"> • Complaints handling procedure under the Code of Conduct for Council Members • Code of Conduct for Council Employees
Community Plan Link	4.1 We have strong leadership and governance
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1. PREAMBLE

- 1.1. This is a mandatory policy pursuant to Section 91A of the *Local Government (Elections) Act 1999*.
- 1.2. The policy affirms Council's commitment to fair and democratic elections based upon the principle that outgoing elected bodies should not use public resources for election campaigning, nor make decisions which may unreasonable, inappropriately or unnecessarily bind and incoming Council.

2. PRINCIPLES

- 2.1. The Policy applies to:
 - Each periodic election of members of the Council under the *Local Government (Elections) Act 1999* (Elections Act); and
 - Each general election of members of the Council held pursuant to a proclamation or notice under the *Local Government Act 1999*.¹
- 2.2. The Policy does not apply to:
 - Supplementary elections.
- 2.3. In this Policy:

¹ Section 91A(1) of the *Local Government (Elections) Act 1999* states that the caretaker policy applies during the 'election period' for a 'general election'. General elections are defined in the *Local Government Act 1999* to mean a periodic election held under section 5 of the *Local Government (Elections) Act 1999*, or an election pursuant to a proclamation or notice under the *Local Government Act 1999*. [In the case of an election pursuant to a notice under section 56 of the *Local Government Act 1999*, the specific provisions of section 57 will apply.]

- All references to ‘Elected Members’ should be read as including the Mayor and the Deputy Mayor; and
 - All references to the Chief Executive Officer should be read as including an Acting Chief Executive Officer and their delegate.
- 2.4. The Policy applies during an election period of Council to:
- 2.4.1. Designated decisions made by Council, as defined by the Elections Act;
- 2.4.2. The use of Council resources, including:
- Materials publishing by Council;
 - Attendance and participation at functions and events;
 - Access to Council information;
 - Media services issues;
 - Responsibilities of Council staff; and
- 2.4.3. Other significant decisions that are made by the Council.
- 2.5. The Policy applies to Elected Members, the Chief Executive Officer and to staff and captures all designated decisions of Council, a committee of Council or a delegate of the Council – refer to Clause 5.2.
- 2.6. The Policy does not apply to the Council Assessment Panel (formerly known as the Development Assessment Panel or DAP) as the Panel is established under Section 83 of the *Planning, Development and Infrastructure Act 2016* and does not make decisions which fall within the definition of designated decision.

3. POLICY OBJECTIVES

- 3.1. During a Local Government election period, Council will assume a ‘Caretaker mode’, and will avoid actions and decisions which could be perceived as intended to affect the results of an election or otherwise to have a significant impact on or unnecessarily bind the incoming Council.
- 3.2. The purpose of this Policy is to clearly set the parameters that Council will operate within during a Caretaker period. Caretaker provisions are required pursuant to section 91A of the Elections Act and are generally regarded as necessary for the promotion of transparent and accountable government during an election period.

4. DEFINITIONS

‘Caretaker period’ will commence on the day of the close of nominations for the election.

‘Council’s Electoral Liaison Officer’ the council employee nominated by the Chief Executive Officer to undertake in-house election functions.

‘Designated decision’ (as defined under Section 91A(8) of the Elections Act) means a decision which prevents Council from making a resolution of the type specified. See clause 5.2 below.

An **‘election period’** – as defined in section 91A(8) of the Elections Act:

- (a) **Commences** on the day of the close of nominations for the election; or
- (b) If a Council has specified a day (being a day that falls earlier than the day of the close of the nominations) in its Caretaker Policy – the specified day, and expiring at the conclusion of the election.
- (c) ‘conclusion of the election’ (as defined at Section 4(2) of the *Local Government Act 1999*) for the relevant periodic or general election being the time at which the last result of the election is certified by the returning officer.

'Employee' for the purposes of this Policy, "employee" includes council volunteers and external contractors.

'General election' (as defined in Section 4(2) of the *Local Government Act 1999*) means a general election of members of the council (whether held under section 5 of the *Local Government (Elections) Act 1999* or pursuant to a proclamation or notice under the Local Government Act.

'Periodic election' (as defined in Section 4(2) of the *Local Government Act 1999*) means an election to fill offices of a council held pursuant to section 5 of the *Local Government (Elections) Act 1999*.

'Prescribed contract' (as defined in section 91A(8) of the Elections Act) means a contract entered into by the Council for the purpose of undertaking –

- (a) Road construction or maintenance; or
- (b) Drainage works

5. POLICY

5.1. 'Designated decisions' prohibited by the Elections Act

5.1.1. In accordance with section 91A(8) of the Elections Act.

5.1.2. "Designated decision" means a decision:

- (a) Relating to the employment or remuneration of a chief executive officer, other than a decision to appoint an acting chief executive officer; or
- (b) To terminate the appointment of a chief executive officer; or
- (c) To enter into a contract, arrangement or understanding (other than a prescribed contract) the total value of which exceeds whichever is the greater of \$100,000 or 1% of the Council's revenue from rates in the preceding financial year; or
- (d) Allowing the use of Council resources for the advantage of a particular candidate or group of candidates (other than a decision that allows the equal use of Council resources by all candidates for election), other than a decision of a kind excluded from this definition by regulation.

5.1.3. If Council considers that there are extraordinary circumstances which require the making of a designated decision during the election period, Council may apply, in writing, to the Minister for an exemption from the application of s91A of the Elections Act. If the Minister chooses to grant an exemption, this exemption may be subject to any conditions or limitations that the Minister considers appropriate.

5.1.4. Council notes that the Elections Act stipulates that any designated decision made by the Council during the election period without an exemption from the Minister is invalid. Council will be liable to pay compensation to any person who suffers loss or damage as a result of acting in good faith in reliance on such an invalid designated decision.

5.2. Scheduling consideration of designated decisions

5.2.1. The Chief Executive Officer must ensure that designated decisions are not scheduled for consideration during the election period.

5.3. Decisions made prior to an election period

5.3.1. The Policy applies to actual decisions made during an election period, not the announcement of decisions made prior to the election period.

5.4. Other significant decisions which are prohibited by operation of this Policy

Prohibited Decision	Notes
Any major policy or other decisions which will significantly affect the Council area or community or will inappropriately bind the incoming Council	This is an internal requirement of Council

- 5.4.1. So far as is reasonably practicable, the Chief Executive Officer should avoid scheduling significant decisions (including major policy decisions) for consideration during an election period and, instead, ensure that such decisions are:
- considered by Council prior to the election period; or
 - scheduled for determination by the incoming Council.
- 5.4.2. In the context of this policy, a **'major policy'** decision may include any decision:
- To spend unbudgeted monies;
 - To conduct unplanned public consultation;
 - To endorse a new policy;
 - To approve community grants'
 - To progress any matter which has been identified as an election issue; or
 - Any other issue that is considered a major policy decision by the CEO that is not a designated decision.

5.5. Role of the Chief Executive Officer

- 5.5.1. The determination as to whether a major policy or other decision is significant will be made by the Chief Executive Officer, after consultation with the Mayor or Committee Presiding Member.

5.6. Considerations for urgent decisions

- 5.6.1. Where circumstances arise that require a decision to be made during an election period, and the Chief Executive Officer has determined that the decision is a major policy or otherwise significant decision per clause 5.4 a report will be presented to Council to allow for consideration of the matter and to determine whether the significant decision will be made.
- 5.6.2. The report to Council will address the following issues, where relevant:
- a) the 'significance' of the matter;
 - b) the urgency of the matter;
 - c) the financial impacts and other potential consequences of postponing the matter until after the election, on both the current Council and incoming Council;
 - d) Whether deciding the matter will bind or significantly limit the policy choices of the incoming Council;
 - e) Whether the matter requires the expenditure of unbudgeted funds;
 - f) Whether the matter is the completion of an activity already commenced and previously endorsed by Council;
 - g) Whether the matter requires community engagement;
 - h) Any relevant statutory obligations or timeframes; and

- i) Whether dealing with the matter in the 'election period' is in the best interest of the Council area and community.

5.6.3. The aim of the report is to assist Elected Members to assess whether the decision should be deferred for consideration by the incoming Council.

5.7. Exemptions to “Designated decisions”

5.7.1. To assist Council's ongoing operations during the caretaker period r12 of the *Local Government (Elections) Regulations 2010* provides a number of exemptions from the definition of designated decision. For the purposes of section 91A of the *Elections Act*, the following kinds of decisions are excluded from the definition of designated decision:

- a) Is related to the carrying out of works in response to an emergency or disaster within the meaning of the *Emergency Management Act 2004*, or under section 298 of the *Local Government Act 1999*, or
- b) Is an expenditure or other decision required to be taken under an agreement by which funding is provided to the Council by the Commonwealth or State Government or otherwise for the Council to be eligible for funding from the Commonwealth or State Government; or
- c) Is related to the employment of a particular Council employee (other than the Chief Executive Officer); or
- d) Is made in the conduct of negotiations relating to the employment of Council employees generally, or a class of Council employees, if provision has been made for funds relating to such negotiations in the budget of the Council for the relevant financial year and the negotiations commenced prior to the election period; or
- e) Is related to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the Council; or
- f) is for the suspension of the Chief Executive Officer for serious and wilful misconduct.

5.8. Use of Council resources

5.8.1. Council notes that Section 91A(8)(d) of the *Elections Act* prohibits the making of a decision that allows the use of Council resources for the advantage of a particular candidate or group of candidates (unless there is a decision that allows the equal use of council resources by all candidates for election). This includes a candidate or candidates who are currently Elected Members of the Council.

5.8.2. Council resources cover a wide range of personnel, goods, services, information and opportunities and may include:

- Materials published by Council
- Attendance and participation at functions and events;
- Access to Council information; and
- Media services issues.

5.8.3. Elected Members and staff will ensure that due propriety is observed in the use of Council resources and must exercise appropriate judgement in this regard.

5.8.4. During an election period, Council resources, including officers, support staff, hospitality services, equipment and stationery must be used exclusively for normal Council business and, must not be used in connection with an election

other, unless permitted by the Chief Executive Officer as strictly relating to the election process.

5.8.5. Council Publications during an Election Period

5.8.5.1. *Prohibition on publishing certain materials during an election period*

Subject to the operation of Section 12(b) of the *Elections Act* Council must not:

- a) Print, publish or distribute; or
- b) Cause, permit or authorise others to print, publish or distribute on behalf of Council,

any advertisement, handbill, pamphlet or notice that contains electoral material during an election period.

For the purposes of this Policy 'electoral material' means material which is calculated (i.e. intended or likely) to affect the result of an election. However, it does not include any materials produced by Council relating to the provision of information, education and publicity designed to promote public participation in the electoral processes, or materials produced by or on behalf of the Returning Officer for the purposes of conducting an election.

The Policy does not prevent publications by Council which merely announce the holding of an election or relate only to the election process itself for the purposes of Section 12(b) of the *Elections Act* or otherwise. Council may provide information, education and publicity designed to promote public participation in the electoral processes for its area, and to inform potential voters about the candidates who are standing for election in its area. It will not publish material that refers to, or comments on, an issue submitted to or that is otherwise before voters in connection with the election.

Elected Members are, however, permitted to publish campaign material on their own behalf, but cannot assert that the material is originating from, or authorised by, Council (e.g. by the use of Council logos or their Council email address).

NOTE: 'Publication' means any type of publication, including but not limited to leaflets, newspapers, posters, email, website, radio, social media etc.

5.8.5.2. *Council website*

During an election period, new material that is prohibited by this Policy will not be placed on the Council website. Any content referring to the election will only relate to the provision of information, education and publicity designed to promote public participation in the electoral process. Information about Elected Members will be restricted to names, contact details, titles, membership of committees and other bodies to which they have been appointed by the Council.

The Council's website will include an express link or reference to the Local Government Association publication of candidate profiles and electoral statements for the purposes of section 19A of the *Elections Act*.

5.8.5.3. Other Council publications

Insofar as any Council publications, such as the Annual Report, are required to be published during an election period, the content contained within them regarding Elected Members will be restricted to that prescribed by the *Local Government Act 1999* and Regulations.

Council publications produced before an election period containing material which might be construed as electoral material must not be circulated or displayed during the election period. However, these materials may be made available to members of the public upon request.

5.8.6. Attendance at Events and Functions during an election period

5.8.6.1. In this clause, reference to events and functions means gatherings involving external stakeholders to discuss, review, acknowledge, communicate, celebrate or promote a program, strategy or issue which is of relevance to Council and its community and may take the form of conferences, workshops, forums, launches, promotional activities, and social occasions such as dinners, receptions and balls.

5.8.6.2. Events staged by external bodies

Elected Members may continue to attend events and functions staged by external bodies during an 'election period'.

5.8.6.3. Council events and functions

Council organised events and functions held during the election period will be reduced to only those essential to the operation of the Council.

5.8.6.4. Addresses by Elected Members

Elected Members must not give speeches or keynote addresses at Council organised or sponsored events and functions during an election period.

Elected Members may, however, make short welcome speeches at Council organisation or sponsored events and functions during an election period.

5.8.6.5. Publication of promotional material

In preparing any material concerning a Council organised or sponsored function or event that will be published or distributed during the election period, such preparation will be consistent with Clause 5.8.5 of this policy.

5.9. Access to Council Information

5.9.1. Elected Members' statutory right to access Council information relevant to the performance of their functions as an Elected Member continues during an election period. This right should be exercised with caution and limited to matters that the Council is dealing with within the objectives and intent of this Policy. Any Council information so accessed that is not publicly available must not be used for election purposes.

5.9.2. All candidates (including those that are Elected Members) have equal rights of access to **public information** relevant to their election campaigns from Council administration. Neither Elected Members nor candidates will be

provided with information or advice from Council staff that might be perceived to support an election campaign, and there shall be transparency in the provision of all information and advice during an election period.

5.9.3. Information and briefing material

5.9.3.1. Information and briefing material prepared or secured by staff for an Elected Member during an election period must be necessary to the carrying out of the Elected Member's role and, where appropriate, provided to any candidate seeking the same information. Queries by staff regarding the provision of information will be directed to the Chief Executive Officer in the first instance.

5.10. Media Service

5.10.1. Council's media services are directly managed by or under the supervision of the Chief Executive Officer, are provided solely to promote Council activities or initiatives and must not be used in any manner that might favour a candidate during an election period.

5.10.2. Media Advice

5.10.2.1. Any request for media advice or assistance from Elected Members during an election period will be referred to the Chief Executive Officer. No media advice will be provided in relation to election issues or in regard to publicity that involves specific Elected Members.

5.10.3. Media releases/spokespersons

5.10.3.1. Media releases will not refer to specific Elected Members. Where it is necessary to identify a spokesperson in relation to an issue, the Chief Executive Officer will be the nominated person unless otherwise determined by the Chief Executive Officer.

5.10.4. Publicity campaigns

5.10.4.1. During the election period, publicity campaigns, other than for the purpose of conducting the election in accordance with the requirements of Section 12(b) of the *Elections Act*, will be avoided wherever possible. Where a publicity campaign is deemed necessary for a Council activity, it must be approved by the Chief Executive Officer.

5.10.4.2. In any event, Council publicity during an election period will be restricted to communicating normal Council activities and initiatives without any variation in form or size.

5.10.5. Elected Members

5.10.5.1. Elected Members will not use their position as an elected representative or their access to Council staff and other Council resources to gain media attention in support of an election campaign.

5.10.6. Council Employees

5.10.6.1. During an election period, no Council employee may make any public statement that relates to an election issues unless such statements have been approved by the Chief Executive Officer.

5.10.6.2. For purposes of this Policy, "employee" includes council volunteers and external contractors.

5.11. Council Staff Responsibilities during an Election Period

- 5.11.1. Prior to any election period, the Chief Executive officer will ensure that all members of Council staff are advised in relation to the application of the Caretaker Policy.

5.11.2. Correspondence

- 5.11.2.1. All correspondence addressed to Elected Members will be answered by the Chief Executive Officer during the election period.

5.11.3. Activities that may affect voting

- 5.11.3.1. Council staff must not undertake any activity that may affect voting in the election, except where the activity relates to the election process and is authorised by the Chief Executive Officer;
- 5.11.3.2. Council staff must not authorise, use or allocate a Council resource for any purpose which may influence voting in the election, except where it relates only to the election process and is authorised by the Chief Executive Officer; and
- 5.11.3.3. Council staff must not assist Elected Members in ways that are or could create a perception that they are being used for electoral purposes. In any circumstances where the use of Council resources might be construed as being related to a candidate's election campaign, the use must be reported to, and advice sought from, the Chief Executive Officer.

5.12. Equity in Assistance to Candidates

- 5.12.1. Council confirms that all candidates for Council election will be treated equally.

5.12.2. Candidate assistance and advice

- 5.12.2.1. Any assistance and advice provided to candidates as part of the conduct of the Council elections will be provided equally to all candidates. The types of assistance that are available will be documented and communicated to candidates in advance.

5.12.3. Election process enquiries

- 5.12.3.1. All election process enquiries from candidates, whether current Elected Members or not, are to be directed to the Electoral Commission SA Returning Officer or, where the matter is outside of the responsibilities of the Electoral Commission SA Returning Officer, to the Chief Executive Officer or Council's Electoral Liaison Officer.

5.12.4. Expenses incurred by Elected Members

- 5.12.4.1. Payment or reimbursement of expenses of costs relating to Elected Members out of pocket expenses incurred during an 'election period' will only apply to necessary costs that have been incurred in the performance of normal Council duties. No reimbursements will be provided for campaigning, or for expenses that could be perceived as supporting or being connected with a candidate's election campaign.

5.12.5. Council branding and stationery

- 5.12.5.1. No Council logos, letterheads or other Council branding or Council resources or facilities, including Council email addresses,

may be used for, or linked in any way with, a candidate's election campaign.

5.12.6. Support staff to Elected Members

5.12.6.1. Council staff who provide support to Elected Members must not be asked to undertake any tasks connected directly or indirectly with an election campaign for an Elected Members.

5.12.7. Equipment and facilities

5.12.7.1. Equipment and facilities provided to Elected Members for the purpose of conducting normal Council business must not be used for campaigning purposes.

5.13. Public Consultation during an Election Period

5.13.1. Prohibition

5.13.1.1. This Policy prohibits the conduct of discretionary public consultation during the election period.

5.13.1.2. For the purpose of this provision, discretionary public consultation means consultation that is not legislatively mandated and is a process involving an invitation or invitations to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy.

5.13.1.3. The Policy does not prevent any mandatory public consultation required by the *Local Government Act 1999* or any other Act which must be undertaken to enable the Council to fulfil its functions in relation to any matter or decisions which are not prohibited by law or by this Policy.

5.13.2. Approval for public consultation

5.13.2.1. Where public consultation is approved to occur during an election period, the results of that consultation will not be reported to Council until after the election period, except where it is necessary for the performance of functions as set out in clause 5.6 above.

5.13.3. Community meetings

5.13.3.1. Community meetings will not be held during an election period.

6. HANDLING OF CODE OF CONDUCT COMPLAINTS DURING AN ELECTION PERIOD

6.1. Complaints against an Elected Member during an election period will be managed under the Council's "Complaints Handling procedure under the Code of Conduct for Council Members".

6.2. Council recognises that the Electoral Commission has the role of investigating any alleged breach of the *Elections Act*, including alleged illegal practices.

7. LEGISLATION/REFERENCES

- *Code of Conduct for Council Members (as Gazetted 29 August 2013)*
- *Local Government Act 1999*
- *Local Government (Elections) Act 1999*
- *Local Government (Elections) (Miscellaneous) Amendment Act 2009*
- *Local Government (Elections) Regulations 2010*

8. POLICY DELEGATIONS

8.1. Nil applicable

9. ROLES/RESPONSIBILITIES

- 9.1. Pursuant to section 10 of the *Elections Act*, the Electoral Commission for South Australia is the Returning Officer for the Local Government election.
- 9.2. The Council's Electoral Liaison Officer and Electoral Officers undertake the in-house election functions (such as accepting candidate nominations) and are responsible to the Electoral Commissioner in regard to election responsibilities.

10. AVAILABILITY OF POLICY

- 10.1. The Policy is available for public inspection during normal office hours at:
The Civic Centre,
181 Unley Road, Unley SA 5061.

A copy may be purchased for a fee as determined annually by Council.

It is also available for viewing, download and printing free of charge from the Council's website www.unley.sa.gov.au.

11. DOCUMENT HISTORY

Date	Ref/Version No.	Comment
19/04/2010	CSP 305	
27/04/2010	C 644	
14/05/2012	CSP 108	
28/05/2012	C 420	
11/02/2014	A&G 84	
11/03/2014	C 1074	Previously numbered COU13
28/03/2018	C1120	