

S0016: 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	<i>Civic Leadership</i> 4.1 We have strong leadership and governance
Date Adopted	27/04/2010: C644/10
Last review date	22 July 2019: C0065/19
Next review date	March 2020
Reference/Version Number	S0016:V5
ECM Doc set I.D.	2192188

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 unreasonably, inappropriately or unnecessarily bind an 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.

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.]

2.3. In this Policy:

- All references to ‘Elected Members’ should be read as including the Mayor and the Deputy Mayor; and
- All references to the Chief Executive Officer (CEO) should be read as including an Acting CEO 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 published by Council;
- Equipment and stationery;
- Hospitality services and attendance/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 CEO and to staff and captures all designated decisions of Council, a Committee of Council or a delegate of the Council – refer to Clause 5.1.

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 an election 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

‘Council’s Electoral Liaison Officer’ the council employee nominated by the CEO 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 5.1 below.

An **‘election period’**:

(a) commences on the day of the close of nominations for the election; and

(b) expires at the conclusion of the 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 "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.
- 5.1.2. 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.
- 5.1.3. 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 CEO 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. Treatment of other significant decisions

5.4.1. So far as is reasonably practicable, the CEO 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. A 'significant decision' is any major policy or other decision which will significantly affect the Council area or community or will inappropriately bind the incoming Council.

5.4.3. 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.

5.4.4. The determination as to whether a major policy or other decision is significant will be made by the CEO, after consultation with the Mayor or Committee Presiding Member.

5.4.5. Where the CEO has determined that a decision is a major policy or otherwise significant decision, but circumstances arise that require the decision to be made during the election period, the CEO will report this to Council.

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

5.4.7. The CEO report 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.

5.5. Exemptions to “Designated decisions”

5.5.1. 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) A decision 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) 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) A decision related to the employment of a particular Council employee (other than the Chief Executive Officer); or
- d) A decision 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) A decision related to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the Council; or
- f) A decision for the suspension of the Chief Executive Officer for serious and wilful misconduct.

5.6. Use of Council resources

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

- Officers and support staff;
- Equipment and stationery;
- Materials published by Council;
- Hospitality services and attendance/participation at functions and events;
- Access to Council information; and
- Media services issues.

5.6.2. Elected Members and staff will ensure that due propriety is observed in the use of Council resources and will ensure that Council resources are used exclusively for normal Council business and, not used in connection with an

election, unless permitted by the CEO as strictly relating to the election process.

5.6.3. Publication of material during an Election Period

5.6.3.1. 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, including on the Council website or social media channels, that contains electoral material during an election period.

5.6.3.2. 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 announce the holding of an election or 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.

5.6.3.3. Elected Members are 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.

5.6.3.4. 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.

5.6.3.5. 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.

5.6.4. Attendance at Events and Functions during an election period

5.6.4.1. 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.

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

- 5.6.4.3. Council organised events and functions held during the election period will be reduced to only those essential to the operation of the Council.
- 5.6.4.4. 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 remarks at Council organised or sponsored events and functions during an election period.

5.7. Media Service

- 5.7.1. Council's media services are directly managed by or under the supervision of the Chief Executive Officer, and 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.
- 5.7.2. 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.
- 5.7.3. 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.
- 5.7.4. 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.
- 5.7.5. 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.
- 5.7.6. 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.
- 5.7.7. 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.

5.8. Council Staff Responsibilities during an Election Period

- 5.8.1. 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.

5.8.2. Correspondence

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

5.8.3. Activities that may affect voting

- 5.8.3.1. 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;
- 5.8.3.2. 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
- 5.8.3.3. 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.

5.9. Public Consultation during an Election Period

- 5.9.1. This Policy prohibits the conduct of discretionary public consultation during the election period.
- 5.9.2. 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.
- 5.9.3. 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.
- 5.9.4. 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 5.4 above.
- 5.9.5. Community meetings will not be held during an election period.

6. 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*

7. POLICY DELEGATIONS

- 7.1. Nil applicable

8. ROLES/RESPONSIBILITIES

- 8.1. Pursuant to section 10 of the *Elections Act*, the Electoral Commission for South Australia is the Returning Officer for the Local Government election.

8.2. 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.

9. AVAILABILITY OF POLICY

9.1. 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.

10. DOCUMENT HISTORY

Date	Ref/Version No.	Comment
27/04/2010	C644: V1	
28/05/2012	C420: V2	
11/03/2014	C1074:V3	
28/03/2018	C1120:V4	
22/07/2019	C0065:V5	