

CARETAKER POLICY

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| Policy Type | Council |
| Responsible Department | Office of the CEO |
| Responsible Officer | Manager Governance |
| Related Policies and Procedures | <ul style="list-style-type: none"> • Code of Conduct for Council Members • Elected Member Training and Development Policy • Employee Code of Conduct • Local Government Association of South Australia – Model Caretaker Policy |
| Community Plan Link | 4. Civic Leadership 4.1 We have strong leadership and governance |
| Date Originally Adopted | 27 April 2010 |
| Last Review Date | 25 March 2024: C1236/24 |
| Next Review Date | June 2026 |
| ECM Document No. | 8974909 |

1. PREAMBLE

- 1.1. The Caretaker Policy (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
- 1.2. This is a mandatory Policy required under Section 91A – Conduct of council during election period of the *Local Government (Elections) Act 1999 (Act)*.

2. SCOPE

- 2.1. This Policy applies throughout the election period for a general election. and ends at the conclusion of the election when results have been declared.
- 2.2. This Policy applies to:
- Council;
 - Council Members; and
 - Council staff.

2.3. The Policy applies during an election period of Council to:

2.5.1 Designated decisions made by Council, as defined by the Act;

2.5.2 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 and activities; and
Council staff.

2.5.3 Other significant decisions that are made by the Council.

2.4. The Policy does not apply to:

- Supplementary elections.
- Announcements of decisions made by Council prior to the election period.

2.5. The Policy does not apply to the Council Assessment Panel (CAP) 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.

2.6. In this Policy:

- All references to 'Council 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.

3. POLICY PURPOSE/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 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 Act and are regarded as necessary for the promotion of transparent and accountable government during an election period.

4. DEFINITIONS

| <u>Term</u> | <u>Definition</u> |
|--------------------------------------|---|
| Chief Executive Officer (CEO) | means the appointed CEO or Acting CEO |
| Council | Means a council constituted under the <i>Local Government Act 1999</i> (the Local Government Act) |
| Council Member | means an Elected Member of the City of Unley |
| Council staff/employee | means any person that is employed full-time, part-time, or casually by the Council who receives remuneration for their work |

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| Council Electoral Liaison Officer | means council employee(s) nominated by the deputy returning officer to undertake in-house election functions |
| Deputy Returning Officer | means a council employee(s) appointed by the Electoral Commissioner for South Australia to undertake the conduct of the election |
| Designated decision | (as defined under Section 91A(8) of the Act) means a decision which prevents Council from making a resolution of the type specified (Refer Clause 6.1) |
| 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 (Refer Clause 6.9) |
| Electoral material | means material which is calculated (i.e., intended, or likely) to affect the result of an election (Refer Clause 6.6.2) |
| Electoral Officer | means a council employee(s) appointed by the Deputy Returning Officer to assist with the election process |
| Election period | means the period commencing on the day of the close of nominations for a general election and expiring at the conclusion of the general election. |
| General election | means a general election of Council Members held: (a) under section 5 of the Act; or pursuant to a proclamation or notice under the Local Government Act |
| Minister | means the Minister for Local Government or other minister of the South Australian government vested with responsibility for the Act. |
| Major policy decision | means a type of decision that the CEO should avoid scheduling for consideration during an election period (Refer Clause 6.2.2) |
| Prescribed contract | (as defined by Section 91A(8) of the Act) means a contract entered into by Council for the purpose of undertaking: <ul style="list-style-type: none"> • road construction or maintenance; or • drainage works |
| Publication | means any type of publication, including but not limited to, leaflets, newspapers, posters, email, website, radio, social media etc |
| Significant decision | means any major policy or other decision which will significantly affect the Council area or community or will inappropriately bind the incoming Council (Refer Clause 6.2) |

5. ROLES AND RESPONSIBILITIES

| <u>Role</u> | <u>Responsibilities</u> |
|-------------------------------|--|
| Council Members | Must comply with the requirements of this Policy |
| Chief Executive Officer (CEO) | During an election period: <ul style="list-style-type: none"> • avoid scheduling major policy decisions; • may use Council publications such as Unley Life to promote the upcoming election; • manage media services and publicity campaigns; and • answer all correspondence addressed to Council Members |
| Governance | Responsible for the review and application of this Policy |
| Employees | Must comply with all staff/employee requirements detailed within the Policy during the election period |

- 5.1.** Pursuant to Section 10 of the Act, the Electoral Commissioner for South Australia (Electoral Commissioner) is the Returning Officer for the election.
- 5.2.** The Electoral Commissioner may appoint one or more deputy returning officers (Council Staff) to undertake the conduct of the election.
- 5.3.** A deputy returning officer, with the approval of the Electoral Commissioner, may engage a Council Electoral Liaison Officer and other Electoral Officers to assist in the conduct of the election by undertaking the in-house election functions.

6. POLICY STATEMENT

6.1. 'Designated decisions' prohibited by the *Local Government (Elections) Act 1999*

6.1.1. The Council is prohibited from making a designated decision during an election period. A decision of the Council includes a decision of:

- a committee of Council; and
- a delegate of Council

6.1.2. In accordance with section 91A(8) of the Act "designated decision" means a decision:

- (a) relating to the employment or remuneration of a CEO other than a decision to appoint an acting CEO; or
- (b) to terminate the appointment of a CEO; or
- (c) to enter into a contract, arrangement or understanding (other than a contract for road construction, road maintenance or drainage works, known as 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, except if the decision:
 - i. relates 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; which deals with the power of Council to act in an emergency;

- ii. 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;
- iii. relates to the employment of a particular Council employee (other than the CEO);
- iv. 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
- v. relates to a Community Wastewater Management System scheme that has, prior to the election period, been approved by the Council.

6.2. Treatment of other significant decisions prohibited by this Policy

- 6.2.1. As 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.
- 6.2.2. In the context of this Policy, a ‘major policy decision,’ not being a designated decision, may include a decision:
- to spend unbudgeted monies;
 - to conduct unplanned public consultation;
 - to endorse a new policy;
 - to dispose of council land;
 - 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.
- 6.2.3. 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 (as relevant). The CEO must keep a record of all such determinations made by the CEO (including by previous CEO’s) and make this list available to candidates upon request.
- 6.2.4. 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.
- 6.2.5. The aim of the CEO report to Council is to assist Council Members to assess whether the decision should be deferred for consideration by the incoming Council.

6.2.6. The CEO's report to Council will address the following issues, where relevant:

- a) why the matter is considered 'significant';
- b) why the matter is considered urgent;
- c) what are 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 options 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.

6.2.7. Council will consider the CEO's report and determine whether or not to make the decision.

6.3. Prohibition on the use of Council resources

6.3.1. Council resources must not be used for the advantage of a particular candidate or group of candidates.

6.3.2. For clarity, neither the Act, nor this Policy prohibits a council providing resources to all members of the public, which incidentally includes all candidates for election.

6.3.3. The following Council resources **must not** be used for the advantage of a particular candidate or group of candidates and may only be used by Council Members, where necessary, in the performance of their ordinary duties as a Council Member:

- Mobile phones
- Council vehicles
- Council provided landline phones, computers, and other office equipment beyond that provided to member of the public (e.g., in a public library)
- Council provided business cards
- Requests to Council employees to perform tasks which would confer an advantage on a candidate or group of candidates
- The ability to issue invitations to Council events
- Council travel arrangements (e.g., access to Council negotiated rates for flights, accommodation or hire cars)

- Access to areas that members of the public cannot access, including areas within the property of third parties (e.g., 'Mayors Parlour' at a suburban football oval)
- Council produced promotional brochures and documents

6.3.4. Despite Clause 6.3.1, the Council may determine those Council resources that may be used by all candidates for election on an equal basis.

6.4. Consequence of contravening this Policy

6.4.1. A designated decision made by Council during an election period is invalid, except where an exemption has been granted by the Minister under Sections 91A(4)(5) of the Act.

6.4.2. Any person who suffers loss or damage as a result of acting in good faith on a designated decision made by the Council in contravention of this Policy is entitled to compensation from the Council for that loss or damage under Section 91(A)(6) of the Act.

6.5. Application for exemption

6.5.1. If the Council considers that it is faced with extraordinary circumstances which require the making of a designated decision during the election period, the Council may apply, in writing, to the Minister for an exemption to enable the making of a designated decision that would otherwise be invalid under Section 91A(3) of the Act and this Policy.

6.5.2. If the Minister grants an exemption to enable the making of a designated decision that would be invalid under Sections 91A(4)(5) of the Act and this Policy, then the Council and Council staff will comply with any conditions or limitations that the Minister imposes on the exemption.

6.6. Publication of material during an election period

6.6.1. Subject to the operation of Section 12(b) of the 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.

6.6.2. 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.

- 6.6.3. Council 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., using Council logos or their Council email address).
- 6.6.4. 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 Council Members will be restricted to that prescribed by the Local Government Act and *Local Government (General) Regulations 2013* (Regulations).
- 6.6.5. 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.
- 6.6.6. If Unley Life is scheduled to be published during the election period, the CEO may use this publication as an opportunity to promote the upcoming election.
- 6.6.7. Council Member columns will not be included in Unley Life editions published during the election period. The profiles of all candidates may be included in place of the Council Member columns.

6.7. Attendance at Events and Functions during an election period

- 6.7.1. 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.
- 6.7.2. Council Members may continue to attend events and functions staged by external bodies during an election period.
- 6.7.3. Council organised events and functions held during the election period will be reduced to only those essential to the operation of the Council.
- 6.7.4. Council Members must not give speeches or keynote addresses at Council organised or sponsored events and functions during an election period. Council Members may, however, make short welcome remarks at Council organised or sponsored events and functions during an election period.

6.8. Media Service

- 6.8.1. During an election period, Council's media services are directly managed by the CEO and are provided solely to promote Council activities or initiatives and must not be used in any manner that might favour a candidate during this period.
- 6.8.2. Any request for media advice or assistance from Council Members during an election period will be referred to the CEO. No media advice will be provided in relation to election issues or in regard to publicity that involves specific Council Members.

- 6.8.3. Media releases will not refer to specific Council Members. Where it is necessary to identify a spokesperson in relation to an issue, the CEO will be the nominated person unless otherwise determined by the CEO.
- 6.8.4. 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 Act, will be avoided wherever possible. Where a publicity campaign is deemed necessary for a Council activity, it must be approved by the CEO.
- 6.8.5. 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.
- 6.8.6. Council 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.
- 6.8.7. During an election period, no Council employee may make any public statement that relates to an election issue unless such statements have been approved by the CEO.
- 6.8.8. **Correspondence**
- 6.8.8.1. All correspondence addressed to Council Members will be answered by the CEO during the election period.
- 6.8.9. **Activities that may affect voting**
- 6.8.9.1. 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 CEO.
- 6.8.9.2. 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 CEO.
- 6.8.9.3. Council staff must not assist Council 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 CEO.

6.9. Public Consultation during an election period

- 6.9.1. This Policy prohibits the conduct of discretionary public consultation during the election period.
- 6.9.2. The Policy does not prevent any mandatory public consultation required by the Local Government Act 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.

6.9.3. 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 6.9.2 above.

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

6.10. Council Member Training and Development

6.10.1. The provisions within the Elected Member Training and Development Policy will cease at the close of nominations and recommence once the new Council has been sworn into office meaning that the Council will not fund any training and development activities for Council Members during this period.

7. POLICY DELEGATIONS

Nil.

8. LEGISLATION

- *Emergency Management Act 2004*
- *Local Government Act 1999*
- *Local Government (Elections) Act 1999*
- *Local Government (Elections) Regulations 2010*
- *Local Government (General Regulations) 2013*
- *Planning Development and Infrastructure Act 2016*

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 | Version No. | Comment |
|------------|-------------|---|
| 27/04/2010 | 1 | C644 |
| 28/05/2012 | 2 | C420 |
| 11/03/2014 | 3 | C1074 |
| 28/03/2018 | 4 | C1120 |
| 22/07/2019 | 5 | C0065 |
| 26/03/2019 | 6 | C1120/19 |
| 28/03/2022 | 7 | C0746/22: Review of Policy, prior to November 2022 Local Government Elections with guidance from the LGA Caretaker Guidelines |
| 25/03/2024 | 8 | C1236/24 |

