



## **COUNCIL POLICY**

### **Caretaker Policy**

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**Responsible Officer:** Executive Manager, Finance & Risk

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# CARETAKER POLICY

## 1 Introduction

It is a long established democratic 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.

This policy affirms Council's commitment to fair and democratic elections, and adherence to this principle. This policy includes a commitment to comply with the requirements of Section 91A of the *Local Government (Elections) Act 1999* (the Act).

## 2 Legislative Requirements

Section 91A of the Act requires that Council adopt a Caretaker Policy to govern the conduct of the Council (Council Members as the governing body) and its staff during the election period for a general election.

This Policy must be complied with under clause 2.7 of the Codes of Conduct for both Council Members and Employees.

## 3 Policy Objectives

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.

The purpose of this Policy is to clearly set the parameters that Council will operate within during a Caretaker period. Caretaker provisions are generally regarded as necessary for the promotion of transparent and accountable government during an 'election period'.

This Caretaker Policy has been designed to formalise Council's commitment to ensure that:

- The election period is managed in a manner that is ethical, fair and equitable and is publicly perceived as such;
- The incumbent Council does not inappropriately make decisions that will be binding on an incoming Council and limit its freedom to make its own decisions;;
- No actions and decisions which could be perceived as intended to affect the results of an election are made;
- The day to day business of the Council continues efficiently and in a normal manner;
- Council resources are not diverted for, or influenced by, electoral purposes or used to improperly advantage existing Council Members as candidates in the election; and
- Council employees act impartially in relation to all candidates.

## 4 Application

### 4.1 Scope

This Policy applies to decisions of both the elected Council (Council Members as the governing body), a committee of Council, a delegate of the Council, including the Chief Executive Officer and Council staff.

This Policy applies to:

- Each periodic election of members of the Council under the Act; and
- Each general election of members of the Council held pursuant to a proclamation or notice under the *Local Government Act 1999*.

This Policy does not apply to:

- Supplementary elections.

In this Policy:

- All references to 'Council Members' should be read as including the Lord Mayor and the Deputy Lord Mayor; and
- All references to the Chief Executive Officer should be read as including an Acting Chief Executive Officer and his/her delegate.

### 4.2 Outline

This Policy applies during an 'election period' of Council to cover:

- (a) designated decisions as defined in the Act that are made by Council; and
- (b) use of Council resources;
- (c) other significant decisions that are made by the Council.

### 4.3 Election Period

An '*election period*':

- (a) **commences** on the day of the close of nominations for the election; and
- (b) **terminates** at the '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.

## 5 Designated Decisions

### 5.1 'Designated decisions' prohibited by the Local Government (Elections) Act 1999

The following table outlines those decisions which are expressly prohibited during an election period by section 91A of the Act.

<b>Designated Decisions</b>	
(a)	<p>A decision relating to the employment or remuneration of the Chief Executive Officer, (other than a decision to appoint an acting Chief Executive Officer).</p> <p>Note: A decision for the suspension of a Chief Executive Officer for serious and wilful misconduct can be made because it is excluded from the definition of "designated decision" by regulation.</p>
(b)	<p>A decision to terminate the appointment of the Chief Executive Officer</p>
(c)	<p>A decision 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, other than a decision of a kind excluded from the definition of "designated decision" by regulation.</p> <p>A "<b>prescribed contract</b>" means a contract entered into by the Council for the purpose of undertaking road construction or road maintenance or drainage works.</p> <p>Note: A decision excluded from the definition of a designated decision by regulation is a decision which:</p> <ul style="list-style-type: none"> <li>(i) relates to the carrying out of works in response to an emergency or disaster within the meaning of the <i>Emergency Management Act 2004</i>, or under section 298 of the <i>Local Government Act 1999</i>; or</li> <li>(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; or</li> <li>(iii) relates to the employment of a particular council employee (other than the chief executive officer); or</li> <li>(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</li> <li>(v) relates to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the council.</li> </ul>
(d)	<p>A decision 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).</p> <p>Note: No decisions have been excluded from the definition of "designated decision" in relation to this sub-section.</p>

Council notes that the Act stipulates that any designated decision made by the Council during the 'election period' that is in contravention of section 91A of the Act or this Policy is invalid.

Furthermore, it also notes that the Council is 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.

If the Council considers that there are 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 from the application of section 91A of the Act to the designated decision specified in the application.

### **5.3 Scheduling consideration of designated decisions**

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

### **5.4 Decisions made prior to an 'election period'**

This Policy applies to actual decisions made during an 'election period', not the announcement or implementation of decisions made prior to the 'election period'.

## **6 Significant Decisions**

### **6.1 The following decisions are prohibited by the operation of this Policy.**

Any major policy or other decisions which will significantly affect the Council area or community or will in appropriate bind the incoming Council.

In the context of this policy, a 'major policy' decision may include any decision:

- to spend unbudgeted monies;
- to conduct unplanned public consultation for significant issues;
- to endorse a new policy position;
- to dispose of Council land;
- to approve community grants;
- to progress any matter which has been identified as an election issue; and
- any other issue that is considered a major policy decision by the CEO that is not a 'designated decision'.

### **6.2 Role of the Chief Executive Officer**

So far as is reasonably practicable, the Chief Executive Officer should avoid scheduling significant decisions for consideration during an 'election period' and, instead, ensure that such decisions:

- (a) are considered by Council prior to the 'election period'; or
- (b) are scheduled for determination by the incoming Council.

The determination as to whether any decision is significant will be made by the Chief Executive Officer, after consultation with the Lord Mayor.

### 6.3 Considerations for urgent decisions

Where the Chief Executive Officer has determined that a decision is a significant decision and therefore is covered by 6.1 above, and circumstances arise that require the decision to be made during the election period, the Council will consider the matter and determine whether to make the decision.

Council will consider a report as to whether it should determine an urgent significant decision. This report 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 consequences of postponing the matter until after the election, both on the current Council and the incoming Council;
- (d) Whether deciding the matter will 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 interests of the Council area and community.

The aim of the report is to assist Council Members assess whether the decision should be deferred as a decision for the incoming Council.

## 7 Use of Council Resources

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.

Council Members and staff will ensure that due propriety, and compliance with Section 91A(8)(d) of the Act 1999, is observed in the use of Council resources and must exercise appropriate judgement in this regard.

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 than uses strictly relating to the election process.

### 7.1 Council Publications During an 'Election Period'

#### 7.1.1 *Prohibition on publishing certain materials during an 'election period'*

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 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 relating to the election process by way of information, education or publicity..

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 is otherwise before voters in connection with the election.

Council Members are, however, permitted to publish campaign material on their own behalf, but cannot assert for that material to be originating from, or authorised by, Council (eg by the use of Council logos).

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

### **7.1.2 Council website**

During an 'election period', new material which is prohibited by this Policy will not be placed on the Council website. Any information which refers to the election will only relate to the election process by way of information, education or publicity. Information about Council 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 Administration will review website content prior to the Election Period commencing and ensure any precluded content is removed by the beginning of this period.

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 Act.

### **7.1.3 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 Council Members will be restricted to that strictly required by the *Local Government Act 1999* and Regulations.

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

All Council media and marketing campaigns (excluding those relating to Council's commercial businesses) will be reviewed by the Administration prior to the commencement of the Election Period to determine if such campaigns should be continued or deferred until after the election. Any advertising, marketing or media requests during the Election Period should be referred to the Chief Executive Officer or relevant General Manager for approval.

## **7.2 Attendance at Events and Functions During an 'Election Period'**

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.



### **7.2.1 Events staged by external bodies**

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

### **7.2.2 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. Where events and functions are held, candidates who are not currently Council Members will be invited to attend if appropriate to the type of event or function.

### **7.2.3 Special provisions for events and functions following the close of voting, but prior to the conclusion of the 'election period'**

The Lord Mayor title will not be used in the title of any event or function planned for this period.

For any event or function that occurs after the close of voting, but before conclusion of the 'election period', Council Members are permitted to speak at the function or event, as it will not be possible to influence the elections at this point.

Provisionally elected Council Members are also permitted to speak at an event or function if it takes place following the election.

Guest lists to any event or function during this period will be at the decision of the CEO only, and invitations will be addressed as being from the CEO.

### **7.2.3 Addresses by Council Members**

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 speeches at Council organised or sponsored events and functions during an 'election period'.

### **7.2.4 Publication of promotional material**

In preparing any material concerning a Council organised or sponsored function or event which will be published or distributed during the 'election period', such preparation will be consistent with Clause 7.1 of this Policy.

## **7.3 Access to Council Information**

Council Members continue during an 'election period' to have a statutory right to access Council information relevant to the performance of their functions as a Council Member. 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.

All candidates (including those that are Council Members) have equal rights of access to public information relevant to their election campaigns from Council administration. Neither Council 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'.

Any request from Council Members for information not on the public record during the Election Period should be directed to the Chief Executive Officer or relevant General Manager, who may delegate the request if appropriate. Staff will provide a communication record of contact with the Lord Mayor or a Councillor to their General Manager at their earliest convenience.

Subject to the statutory right to access relevant information, the Administration will ensure that the access privileges to Council's electronic records management system of Council Members will be revoked from the beginning of the Election Period.

#### **7.3.1 Information and briefing material**

Information and briefing material prepared or secured by staff for a Council Member during an 'election period' must be necessary to the carrying out of the Council 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 or relevant General Manager in the first instance.

### **7.4 Media Service**

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'.

#### **7.4.1 Media advice**

Any request for media advice or assistance from Council 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 Council Members.

#### **7.4.2 Media releases / spokespersons**

Media releases will not refer to specific Council Members. Where it is necessary to identify a spokesperson in relation to an issue, the Chief Executive Officer will generally be the appropriate person.

This provision does not override the legislative role of the Lord Mayor as the principal spokesperson of the Council. However, the Lord Mayor, in consultation with the Chief Executive Officer, should consider whether it is appropriate to exercise their legislative role when necessary.

#### **7.4.3 Publicity campaigns**

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, or for the purpose of promoting Council's commercial businesses, 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.

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.

#### **7.4.4 Council Members**

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.

#### **7.4.5 Council employees**

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 Chief Executive Officer.

## **7.5 Council Staff Responsibilities During and Election Period**

### **7.5.1 Correspondence**

All correspondence addressed to Council Members will be answered by the Chief Executive Officer or delegate during the election period.

### **7.5.2 Activities that may affect voting**

- (a) Council staff must not undertake an 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;
- (b) Council staff must not authorise, use or allocate a Council resource for any purpose which may influence voting in the election, except where it only relates to the election process and is authorised by the Chief Executive Officer; and
- (c) 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 incident must be reported to and advice sought from the Chief Executive Officer.

## **7.6 Equity in Assistance to Candidates**

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

### **7.6.1 Candidate assistance and advice**

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.

### **7.6.2 Election process enquiries**

All election process enquiries from candidates, whether current Council Members or not, are to be directed to the Returning Officer or, where the matter is outside of the responsibilities of the Returning Officer, to the Council Liaison Officers (electoral).

### **7.6.3 Expenses incurred by Council Members**

Payment or reimbursement of costs relating to Council 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.

### **7.6.4 Council branding and stationery**

No Council logos, letterheads, or other Council branding or Council resources or facilities may be used for, or linked in any way with, a candidate's election campaign.

### **7.6.5 Support staff to Council Members**

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

### **7.6.6 Equipment and facilities**

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

### **7.6.7 Videos and Other Publications**

Videos or other publications produced by the Council for the purposes of Council business outside of an election period must not be used for campaigning purposes.

Any links to videos or other publications produced by the Council on a Council Member's personal website must be removed from the beginning of the election period. This does not apply retrospectively to links published on Council Members' social media sites, however Council Members should avoid making these types of posts on social media in the lead up to the election period.

Monitoring of Council Members' social media sites by Council employees will continue through the election period, insofar as to ensure business as usual requests are captured. These will be actioned through normal administrative channels, and responses will be provided by Council employees only, through one of the Council's social media sites or other means.

## **7.7 Public Consultation During an 'Election Period'**

### **7.7.1 Prohibition**

Discretionary public consultation will be scheduled either prior to the 'election period' or following the election of the new Council unless approved by the Chief Executive Officer or his/her nominee.

For the purpose of this provision, discretionary public consultation means consultation which is not legislatively mandated and is a process which involves an invitation or invitations to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy. Details of legislatively mandated public consultation processes can be found in the Public Communication & Consultation Policy.

This Policy does not prevent any mandatory public consultation required by the *Local Government Act 1999* or any other Act which is required to 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.

### **7.7.2 Approval for public consultation**

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 at clause 7.7.1 above.

### **7.7.3 Community meetings**

Community meetings arranged or lead by Council will not be held during an 'election period'.

## **8 Handling Code of Conduct Complaints during an 'Election Period'**

- 8.1 Where a Code of Conduct complaint, prima facie, relates to alleged conduct which gives rise to a reasonable suspicion of corruption, serious or systemic misconduct or serious or systemic maladministration, a Public Officer must make a report to the Office for Public Integrity in accordance with the Directions and Guidelines issued under the *Independent Commissioner Against Corruption Act 2012*.
- 8.2 Where a Code of Conduct complaint, prima facie, does not fall within the above provisions, the complaint should be dealt with in the manner set out in Council's Standing Orders, or the employee Code of Conduct complaint process.

- 8.3 Any complaint against a Council Member who is also a candidate for re-election made under the Code of Conduct and under the provisions of 8.2, during an 'election period', will not be heard or determined by the Council during that period.
- 8.4 Where a complaint is made against a Council Member, who is also a candidate for re-election about conduct specifically in relation to this Policy (considered part of Council's Code of Conduct), and the complaint is, in the opinion of the Chief Executive Officer, not so serious as to warrant urgent determination, consideration of the complaint may be deferred until after the 'election period'.
- 8.5 If the Council Member against whom the complaint is made under 8.3 or 8.4 is not returned to office after the election, the complaint will lapse.
- 8.6 Where a complaint is made against a Council Member for a breach of this Policy which is deferred until after the 'election period', the Chief Executive Officer will remind the Council Member of the content of this Policy and will provide them with a copy of it.
- 8.7 Council recognises that the Electoral Commissioner has the role of investigating any alleged breach of the Act , including alleged illegal practices, except in circumstances which involve an allegation of corruption, or serious or systemic maladministration or misconduct of Public Officers.

## **9 Availability of Policy**

This Policy will be available for inspection and purchase at Council's principal office during ordinary business hours and on the council's website [www.adelaidecitycouncil.com](http://www.adelaidecitycouncil.com).