

## 1. Purpose

- 1.1 This is a mandatory policy pursuant to Section 91A of the *Local Government (Elections) Act 1999*.
- 1.2 This policy clearly sets the parameters that Council will operate within during an election period. Caretaker provisions are required pursuant to Section 91A of the Act and are generally regarded as necessary for the promotion of transparent and accountable government during an election period.
- 1.3 This 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. Definitions

- 2.1 In this Policy:

**Chief Executive Officer** means the appointed Chief Executive Officer or Acting Chief Executive Officer or nominee.

**Council staff** means any person that is employed full-time, part-time or casually by the Council who receives remuneration for their work.

**Council Member** means an elected member of the District Council of Mount Remarkable.

**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.

**designated decision** (as defined under Section 91A(8) of the Act) means a decision:

- (a) relating to the employment or remuneration of the Chief Executive Officer, other than a decision to appoint an acting Chief Executive Officer or to suspend the Chief Executive Officer for serious and willful misconduct;
- (b) to terminate the appointment of the Chief Executive Officer;
- (c) to enter into a contract, arrangement or understanding (other than a contract for road works, road maintenance or drainage works) 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* (SA), or under section 298 of the *Local Government Act 1999* (SA);

- (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 Chief Executive Officer);
  - (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 Systems scheme that has, prior to the election period, been approved by the Council; 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).

**general election** means a general election of council members held:

- (a) under section 5 of the Local Government (Elections) Act; or
- (b) pursuant to a proclamation or notice under the *Local Government Act 1999* (SA).

**Minister** means the Minister for Local Government or other minister of the South Australian government vested with responsibility for the Local Government (Elections) Act.

**Major policy decision** means a type of decision that the CEO should avoid scheduling for consideration during an election period (see clause 5.3)

**Publication** means any type of publication, including but not limited to leaflets, newspapers, posters, email, website, radio, social media etc (see clause 9).

**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 (see clause 3.5.3).

### 3. Application of this policy

- 3.1 This policy applies throughout the election period for a general election. For the purposes of the Local Government Elections of November 2022, the Policy commences on 6 September 2022 and ends at the conclusion of the election, when results have been declared.
- 3.2 This policy applies to:

3.2.1 The Council; and

3.2.2 Council staff.

3.3 This policy does not apply to supplementary elections.

3.4 In this Policy, all references to:

- Council Members should be read as including the Chairperson and the Deputy Chairperson; and
- Chief Executive Officer (CEO) should be read as including an Acting CEO and their delegate.

3.5 The Policy applies during an election period of Council to:

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

3.5.2 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 issues;
- responsibilities of Council staff; and

3.5.3 Other significant decisions that are made by the Council.

3.3 This policy is to be taken to form part of the *Code of Conduct for Council Employees* gazetted for the purpose of section 110 of the *Local Government Act 1999*.

3.4 Designated Decisions

3.4.1 The Council is prohibited from making a 'designated decision' during the 'election period'. A decision of the Council includes a decision of

- a. A committee of Council; and
- b. A delegate of Council

## 4. Council resources

4.1 The Council is prohibited from providing or making available Council resources to any particular candidate or group of candidates for the

advantage of a particular candidate or group of candidates, during the 'election period'.

- 4.2 Where appropriate, Council may make council resources available equally to all candidates.
- 4.3 A decision to make council resources available equally to all candidates under this policy will be made by the CEO or a delegated officer.
- 4.4 Council resources may include, but are not limited to a meeting room, office equipment such as photocopiers/whiteboards or any other council equipment that is appropriate.

## 5. Treatment of other significant decisions

- 5.1 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 ensure that such decisions:
  - 5.1.1 are considered by Council prior to the 'election period'; or
  - 5.1.2 are scheduled for determination by the incoming Council.
- 5.2 A 'significant decision' is any major policy or other decision which will significantly affect the Council area or community or will bind the incoming Council.
- 5.3 In the context of this policy, a 'major policy' decision includes any decision (not being a designated decision):
  - 5.3.1 to spend unbudgeted monies;
  - 5.3.2 to conduct unplanned public consultation;
  - 5.3.3 to endorse a new policy;
  - 5.3.4 to dispose of Council land;
  - 5.3.5 to approve community grants;
  - 5.3.6 to progress any matter which has been identified as an election issue; and
  - 5.3.7 any other issue that is considered a major policy decision by the Chief Executive Officer.
- 5.4 The determination as to whether a major policy or not any decision is significant will be made by the Chief Executive Officer, after consultation with the Mayor or Chairperson (as relevant). The CEO must keep a record of all such determinations made by the CEO (including by previous CEOs) and make the list available to candidates upon request.

- 5.5 Where the Chief Executive Officer has determined that a decision is a major policy or otherwise significant, but circumstances arise that require the decision to be made during the election period, the Chief Executive Officer will report this to the Council.
- 5.6 The aim of the Chief Executive Officer's report is to assist Council Members assess whether the decision should be deferred for consideration by the incoming Council.
- 5.7 The Chief Executive Officer's report to Council will address the following issues (where relevant):
  - 5.7.1 why the matter is considered 'significant';
  - 5.7.2 why the matter is considered urgent;
  - 5.7.3 what are the financial and other consequences of postponing the matter until after the election, both on the current Council and the incoming Council;
  - 5.7.4 whether deciding the matter will significantly limit options for the incoming Council;
  - 5.7.5 whether the matter requires the expenditure of unbudgeted funds;
  - 5.7.6 whether the matter is the completion of an activity already commenced and previously endorsed by Council;
  - 5.7.7 whether the matter requires community engagement;
  - 5.7.8 any relevant statutory obligations or timeframes; and
  - 5.7.9 whether dealing with the matter in the election period is in the best interests of the Council area and community.
- 5.8 Council will consider the Chief Executive Officer's report and determine whether or not to make the decision.

## 6. Consequences of contravening this policy

- 6.1 A designated decision made by Council during an election period is invalid, except where an exemption has been granted by the Minister.
- 6.2 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.

## 7. Application for exemption

- 7.1 If the Council considers that it is faced with extraordinary circumstances which

require the making of a designated decision during an 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 of the Local Government (Elections) Act and this policy.

- 7.2 If the Minister grants an exemption to enable the making of a designated decision that would otherwise be invalid under section 91A of the Local Government (Elections) Act and this policy, then the Council and Council staff will comply with any conditions or limitations that the Minister imposes on the exemption.

## 8. Decisions Made prior to an Election Period

- 8.1 The policy applies to actual decisions made during an election period, not the announcement of decisions made prior to the election period.

## 9. Publication of material during an election period

- 9.1 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.

- 9.2 For the purposes of this policy, 'electoral material' means material which is calculated (ie 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.

- 9.3 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 (eg Council logos or their Council email addresses).

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

- 9.4 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 Regulations.

- 9.5 Council publications produced before an election period containing material which might be construed as electoral material must not be circulated or displayed during an election period. However, these materials may be made



available to members of the public upon request.

9.10 If the Council monthly newsletter is scheduled to be published during an election period, the CEO may use this publication as an opportunity to promote the upcoming election.

9.11 The Mayor's column (ie 'From the Mayor') will not be included in the Newsletter published during the election period. The profiles of all candidates may be included in the Newsletter.

## 10. Attendance at Events and Functions during an Election Period

- 10.1 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.
- 10.2 Council Members may continue to attend events and functions staged by external bodies during an election period.
- 10.3 Council organised events and functions held during the election period will be reduced to only those essential to the operation of the Council.
- 10.4 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.

## 11. Media Service

- 11.1 Council's media services are directly managed by or under the supervision of 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 an election period.
- 11.2 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.
- 11.3 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.
- 11.4 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 the publicity campaign is deemed necessary for a Council activity, it must be approved by the CEO.

- 11.5 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.
- 11.6 Council Members will not use their position as an elected representative or their access to Council staff and any Council resources to gain media attention in support of an election campaign.
- 11.7 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.

## 12. Council Staff Responsibilities during an election period

- 12.1 Prior to any election period, the CEO will ensure that all members of Council staff are advised in relation to the application of the Caretaker Policy.
- 12.2 All correspondence addressed to Council Members will be answered by the CEO (or delegate) during the election period.
- 12.3 Activities that may affect voting
  - 12.3.1 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 CEO.
  - 12.3.2 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 CEO.
  - 12.3.3 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.

## 13. Public Consultation during an election period

- 13.1 This policy prohibits the conduct of discretionary public consultation during the election period.
- 13.2 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.

- 13.3 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.
- 13.4 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 13.3 above.

## 14. Council Member Training & Development

- 14.1 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.

## 15. Roles / Responsibilities

Pursuant to Section 10 of the Act, the Electoral Commission for South Australia is the Returning Officer for the Local Government election. Council's Chief Executive Officer undertakes the in-house election functions and is responsible to the Electoral Commissioner in regard to election responsibilities.

## 16. Continuing functions of the Council during the caretaker period

- 16.1 Nothing in this policy prevents the Mayor/Chairperson, Council Members and staff carrying on the business of the Council during the caretaker period. The Mayor/Chairperson will continue to accept invitations to attend community functions, as will Council Members, particularly when those functions are in recognition of activities of community groups whether having gained the support of the Council through grants or not.
- 16.2 The CEO will ensure as far as is practical that Council initiatives will not be launched during the caretaker period.
- 16.3 The Mayor/Chairperson will continue to be Council's spokesperson in the media or at other official functions.

## 17. Document administration and control

Policy title:	Caretaker Policy
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Responsible officer:	
First issued / adopted:	9 August 2011, reference 132.2011
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Last reviewed:	19 April 2022, reference [074-2022] 18 May 2021, reference [103-2021]
Next review date:	March 2026
Current Version:	Version 7
Date revoked:	n/a
Applicable legislation:	Local Government (Elections) Act 1999, s91A Mandatory Code of Conduct for Council Members Code of Conduct for Employees under the Local Government (General) Regulations 2013 Elected Member Training & Development Policy
Related documents:	Nil
Public consultation required / undertaken:	No
Availability	<p>This Policy is available for inspection at the Council office and any person may obtain a copy of this Policy upon payment of the fee fixed by Council in accordance with Council's Fees and Charges adopted each financial year. This policy is available to be downloaded, free of charge, from Council's website <a href="http://www.mtr.sa.gov.au">www.mtr.sa.gov.au</a>.</p> <p>Any grievance in relation to this policy or its application should be forwarded in writing to the Chief Executive Officer of the Council.</p>
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