

# CARETAKER POLICY

Adopted by Council - 13 March 2018

legislative

## PURPOSE

In accordance with Section 91A of the Local Government (Elections) Act 1999 (the Act), Council must adopt a caretaker policy governing the conduct of the council and its staff during the election period for a general election. At a minimum, this policy must prohibit the making of a designated decision, as defined by the Act.

Further to the above, it is the intent of this policy to ensure that the actions of Council, Council Members, and employees of the City of Adelaide do not influence the election process, provide for a fair and equitable election for all candidates, and that no decisions are made which will inappropriately bind the incoming Council.

## STATEMENT

During a Local Government election period, Council 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 candidates in the elections; and
- Council employees act impartially in relation to all candidates.

### Scope

#### ***This Policy applies to decisions of:***

- The elected Council (Council Members as the governing body);
- A committee established by the Council (does not include subsidiary);
- A delegate of the Council, including the Chief Executive Officer and Council staff; and
- The Lady Mayoress.

***This Policy is in effect for:***

- 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, the Deputy Lord Mayor, and the Lady Mayoress (where applicable); and
- All references to the Chief Executive Officer should be read as including an Acting Chief Executive Officer and his/her delegate.

**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.

**Designated Decisions**

***'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><i>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.</i></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><i>Note: for the 2018 elections, 1% of the rates revenue for the 2016/17 financial year is \$1,013,300</i></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><i>Note: A decision excluded from the definition of a designated decision by regulation, is a decision which:</i></p> <ul style="list-style-type: none"> <li><i>(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 1999; or</i></li> <li><i>(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</i></li> <li><i>(iii) relates to the employment of a particular council employee (other than the chief executive officer); or</i></li> <li><i>(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</i></li> <li><i>(v) relates to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the council.</i></li> </ul>
(d)	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).

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, 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.

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

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

#### **Significant Decisions**

##### ***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 inappropriately 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'.

### ***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.

The determination as to whether any decision is significant will be made by the Chief Executive Officer.

### ***Urgent Decisions***

Where the Chief Executive Officer has determined that a decision is a significant decision, 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) 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.

### **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.

### **Council Publications**

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.

'Electoral material' means an advertisement, notice, statement or representation calculated to affect the result of an election or poll.

### **Council website**

Any 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.

### **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.

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 Director for approval.

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

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

Council Members may continue to attend events and functions staged by external bodies during an election period, at their own expense if determined by the Chief Executive Officer.

### ***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.

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

The Lady Mayoress will not hold any function or event during the election period.

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

The Lord Mayor or Lady Mayoress 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 close of voting.

### ***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.

### ***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 the "Council Publications" clause of this Policy.

## **Access to Council Information**

Council Members (excluding the Lady Mayoress) continue 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.

Any request from Council Members for information not on the public record should be directed to the Chief Executive Officer or relevant Director, who may delegate the request if appropriate.

## **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.

### ***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.

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

Media releases will be limited to operational issues rather than policy and/or major projects.

Where it is necessary to identify a spokesperson in relation to an issue, the Chief Executive Officer will be the appropriate person, unless delegated. 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.

### ***Publicity campaigns***

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.

### ***Council Members***

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

### ***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.

## **Council Staff Responsibilities During an Election Period**

### ***Correspondence***

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

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

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;

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

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.

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

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

#### ***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.

There shall be transparency in the provision of information and advice provided to all candidates during an election period. The Council Liaison Officer (electoral) will provide a weekly update to candidates containing all relevant information.

#### ***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 Officer (electoral).

#### ***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.

#### ***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 a Council Member.

#### ***Equipment and facilities***

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

#### ***Social Media***

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.

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

#### ***Prohibition***

Discretionary public consultation i.e. consultation which is not required by legislation, will not occur unless approved by the Chief Executive Officer or his/her nominee.

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.

#### ***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 above.

### **Community meetings**

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

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

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*.

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 through the employee Code of Conduct complaint process.

Any complaint against a Council Member who is also a candidate, made under the Code of Conduct during an election period, will not be heard or determined by Council during that period.

Where a complaint is made against a Council Member who is also a candidate, and made about conduct specifically in relation to this Policy, if the CEO considers the complaint not so serious as to warrant urgent determination, the CEO may defer consideration of the complaint until after the election period.

If the Council Member against whom the complaint is made is not re-elected, the complaint will lapse.

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.

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.

#### **OTHER USEFUL DOCUMENTS**

##### **relevant legislation**

- Local Government (Elections) Act 1999

#### **ADMINISTRATIVE**

As part of Council's commitment to deliver the City of Adelaide Strategic Plan, services to the community and the provision of transparent information, all policy documents are reviewed for currency at least annually as part of the review of delegations. Those requiring detailed consideration are flagged in the current forward Council Policy Program.

Due to its limited application, the Caretaker Policy is reviewed once every four years, in line with Council elections.

**review history:**

*ACC2018/4785: Council, 13 March 2018*

**contact:**

For further information contact the Governance Program

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