



Caretaker Policy

Policy Classification	Council Policy
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Next date of Review:	At least 4 months prior to the 2026 Local Government general election
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Applicable Legislation:	<i>Local Government Act 1999</i> <i>Local Government (Elections) Act 1999</i>
Related Policies or Documents:	Code of Conduct for Elected Members Policy Complaints Against Council Employees Policy Local Government Association "Caretaker Guidelines" document
Associated Forms:	NA
Responsible Manager:	Chief Executive Officer
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Caretaker Policy

1. Preamble

- 1.1. 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.
- 1.2. This Caretaker 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*.

2. Purpose

- 2.1. During a Local Government 'election period', Council will assume a 'Caretaker mode', and will avoid actions and decisions which could be perceived as intended to affect the results of an election or otherwise to have a significant impact on or unnecessarily bind the incoming Council.
- 2.2. The purpose of this Policy is to clearly set the parameters that Council will operate within during a Caretaker period. Caretaker provisions are required pursuant to section 91A of the Local Government (Elections) Act 1999 and are generally regarded as necessary for the promotion of transparent and accountable government during an 'election period'.

3. Scope

- 3.1. This policy applies throughout the election period for a general election. For the purposes of the Local Government Elections of 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. Council Members; and
 - 3.2.2. Council staff.
- 3.3. This Policy does not apply to supplementary elections.

4. Definitions

- 4.1. **Act** means the *Local Government Act (1999)*
- 4.2. **CEO** means the appointed Chief Executive Officer or Acting Chief Executive Officer or nominee.
- 4.3. **Council Member** means an elected member of the Kangaroo Island Council.
- 4.4. **Election period** means the period commencing on the day of the close of nominations for a general election, that being 6th September 2022 and expiring at the conclusion of the general election.
- 4.5. **Council Staff** means any person that is employed full-time, part-time or casually by the Council who receives remuneration for their work.

4.6. **Designated decision** means a decision:

- 4.6.1. relating to the employment or remuneration of the CEO, other than a decision to appoint an acting CEO or to suspend the CEO for serious and wilful misconduct;
- 4.6.2. to terminate the appointment of the CEO;
- 4.6.3. 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:
 - a. 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);
 - b. 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;
 - c. relates to the employment of a particular Council employee (other than the CEO);
 - d. 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
 - e. relates to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the Council.

4.7. **General election** means a general election of council members held:

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

4.8. **Minister** means the Minister for Local Government or other minister of the South Australian government vested with responsibility for the *Local Government (Elections) Act* (1999).

4.9. **Prescribed contract** means a contract entered into by a council for the purpose of undertaking—

- (a) road construction or maintenance; or
- (b) drainage works.

5. Policy Statement

5.1. Prohibition on designated decisions

5.1.1. The Council is prohibited from making a designated decision during an election period.

5.1.2. A decision of the Council includes a decision of:

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

5.2. Treatment of other significant decisions

5.2.1. So far as is reasonably practicable, the Chief Executive Officer must avoid scheduling 'designated decisions' or significant decisions (including major policy decisions) for consideration during an 'election period' and ensure that such decisions:

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

5.2.2. 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.

5.2.3. A 'major policy' decision includes any decision (not being a designated decision):

- a. to spend unbudgeted monies;
- b. to conduct unplanned public consultation;
- c. to endorse a new policy;
- d. to dispose of Council land;
- e. to approve community grants;
- f. to progress any matter which has been identified as an election issue; and
- g. any other issue that is considered a major policy decision by the Chief Executive Officer.

5.2.4. The determination as to whether or not any decision is significant will be made by the Chief Executive Officer, after consultation with the Mayor. The Chief Executive Officer must keep a record of all such determinations made by Chief Executive Officer (including by previous Chief Executive Officers) and make this list available to candidates upon request.

5.2.5. Where the Chief Executive Officer has determined that a decision is 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.

5.2.6. 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.

5.2.7. The Chief Executive Officer'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 and other 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 options for 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.

5.2.8. Council will consider the Chief Executive Officer's report and determine whether or not to make the decision.

5.3. Application for exemption

5.3.1. 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 1999 and this policy.

5.3.2. 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 1999 and this policy, then the Council and Council staff will comply with any conditions or limitations that the Minister imposes on the exemption.

5.4. Prohibition on the use of council resources

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

5.4.2. For clarity, neither the *Local Government (Elections) Act 1999* nor this Caretaker Policy prohibits a council providing resources to all members of the public, which incidentally includes all candidates for election.

5.4.3. 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:

- a. Mobile phones.
- b. Council vehicles.
- c. Council-provided landline phones, computers and other office equipment beyond that provided to members of the public (eg in a public library).
- d. Council-provided business cards.
- e. Requests to council employees to perform tasks which would confer an advantage on a candidate or group of candidates.
- f. The ability to issue invitations to council events.

- g. Council travel arrangements (eg access to council-negotiated rates for flights, accommodation or hire cars).
- h. Councils produced promotional brochures and documents.

5.5. Council Publications During an 'Election Period'

5.5.1. This Policy does not prevent publications by Council which merely announce the holding of an election or relate only to the elections process itself for the purposes of Section 12(b) of the *Local Government (Elections) Act 1999*. 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.

5.5.2. When publishing electoral material, the Council will consider whether or not the material would confer an advantage on a particular candidate or group of candidates for election. If an advantage would be conferred, then the material will not be published or distributed.

NOTE: electoral material means an advertisement, notice, statement or representation calculated to affect the result of an election or poll;

5.5.3. 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 (e.g. by the use of Council logos).

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

5.6. Attendance at Events and Functions during an 'Election Period'

5.6.1. 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 etc.

5.6.2. Council Members can continue to attend events and functions in their capacity as a Council Member during an election period provided that their attendance is consistent with the ordinary course of the Council Member's duties and is not used for campaigning.

5.6.3. Council organised events and functions held during the 'election period' will be reduced to only those essential to the operation of Council.

5.6.4. Council Members must not give speeches or keynote addresses at Council organised or sponsored events and functions during an 'election period'.

5.6.5. Council Members may, however, make short welcome speeches at Council organised or sponsored events and functions during an 'election period'.

5.7. Access to Council information.

5.7.1. 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 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 requests for information must be directed to the Chief Executive Officer in the first instance.

5.8. Media Service

5.8.1. Council media and communication 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'.

5.8.2. Any request for media and communication advice or assistance from Council Members during an 'election period' will be referred to the Chief Executive Officer. No media or communication advice will be provided in relation to election issues or in regard to publicity that involves specific Council Members.

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

5.9. Public Consultation during an 'Election Period'

5.9.1. It is prohibited under this Policy for discretionary public consultation to be undertaken during the 'election period' on an issue which is contentious unless Council specifically resolves otherwise.

5.9.2. 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.

5.9.3. 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.

5.9.4. Where public consultation is approved to occur during an 'election period', the results of that consultation will not be reported to Council until after the 'election period', except where it is necessary for the performance of functions as set out at clause 5.9.3.

5.9.5. Community meetings will not be held during an 'election period' including Community Centres working group meetings.

5.10. Expenses incurred by council members.

- 5.10.1. 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.

5.11. Support employees to Council Members

- 5.11.1. Council employees 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.

5.12. Council Employees Responsibilities During an Election Period

- 5.12.1. All correspondence addressed to Council Members will be answered by the Chief Executive Officer.
- 5.12.2. Council employees 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.
- 5.12.3. Council employees must not authorise, use or allocate a Council resource for any purposes 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
- 5.12.4. Council employees 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.

5.13. Equity in Assistance to Candidates

- 5.13.1. Council confirms that all candidates for the Council election will be treated equally.
- 5.13.2. Any assistance and advice provided to candidates as part of the conduct of the Council elections will be provided equally to all candidates.
- 5.13.3. All election process enquires 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 Chief Executive Officer (or nominee).

5.14. Handling Code of Conduct Complaints During an Election Period

- 5.14.1. Any complaint against an Elected Member who is also a candidate for re-election made under the Code of Conduct for Council Members during an Election Period will not be heard or determined by the Council during that period.

- 5.14.2. If required, any Code of Conduct complaints will be referred to the relevant agency depending on the nature and seriousness of the complaint.
- 5.14.3. The Chief Executive Officer, upon receiving a complaint against an Council Member, who is also a candidate for re-election about conduct specifically in relation to this Policy will refer the complaint for any relevant assessment and investigation in accordance with the Elected Member Code of Conduct Procedure.
- 5.14.4. If the complaint is, in the opinion of the external investigator, not so serious as to warrant urgent determination, consideration of the complaint will be deferred until after the 'election period'.
- 5.14.5. An example of a serious complaint which would warrant urgent determination is where a complaint of a deliberate and wilful breach of this Policy is made, and is supported by sufficient evidence for the external investigator to be satisfied that the conduct of the Council Member was not an honest or innocent mistake.
- 5.14.6. Council recognises that the Electoral Commissioner has the role of investigating any alleged breach of the Local Government (Election) Act 1999, including alleged illegal practices.

5.15. Consequence of contravening this policy

- 5.15.1. A designated decision made by Council during an election period is invalid, except where an exemption has been granted by the Minister.
- 5.15.2. 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.

5.16. AVAILABILITY OF POLICY

This policy is available to be downloaded, free of charge, from Council's website: www.kangarooisland.sa.gov.au . A printed copy may be purchased on request from the Council office.

SIGNED:



Chief Executive Officer

Date: 8 March 2022

History:		
Date Reviewed:	Version:	Reason for Amendment:
15 July 2010	Version 1	N/A
9 July 2014	Version 2	Advent of the new electoral preparations and Caretaker Period, July through November 2014.
12 June 2018	Version 3	Advent of the new electoral preparations and Caretaker Period, July through November 2018. Minute Ref C181:2018
8 March 2022	Version 4	Full policy review, template update and updates to the amendments to section 91A of the <i>Local Government (Elections) Act 1999</i>