Caretaker Policy

This policy is set by Council for use by the community and council administration

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Responsible Team Governance

Other Key Internal Stakeholders Council Members

Initial Date of Adoption 9 March 2010

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Authorised By Council

Resolution No.: 3838

Legal Requirement Local Government (Elections) Act 1999

Date of Next Review November 2023
1. **Purpose**

The Caretaker Policy has been developed in accordance with the provisions of the *Local Government (Elections) Act 1999*. The Policy outlines the mandatory legislative requirements regarding caretaker conventions and provides guidance regarding the acceptable conduct of the Council, Council Members and employees during an election period.

2. **Scope**

The Caretaker Policy fulfils the Council’s obligations under Section 91A of the *Local Government (Elections) Act 1999*, which requires the Council to adopt a caretaker policy.

The Policy establishes the decision making capabilities, practices and conduct allowed during an election period. Council continues to operate during election periods and Council Members continue to perform and discharge their official functions and duties as members of the Council. Council will treat all candidates equally, fairly and without discrimination during an election period.

3. **Legislation and References**

- *Local Government Act 1999*
- *Local Government (Elections) Act 1999*
- *Local Government (Elections) Regulations 2010*
- *Code of Conduct for Council Members*
- *Code of Conduct for Council Employees*

4. **Definitions**

- **Council Member** as stated in the *Local Government Act 1999*, member of a council means the principal member or a councillor of the Council. Elected Member is commonly utilised to refer to Council Member.

- **Caretaker Period** is another commonly utilised term for Election Period.

- **Designated Decision** means a decision that cannot be made during an election period as prescribed by section 91A of the *Local Government (Elections) Act 1999*.

- **Election Period** in relation to an election, means the period commencing on—

  (a) the day of the close of nominations for the election; or

  (b) if a council has specified a day (being a day that falls earlier than the day of the close of nominations) in its caretaker policy—the specified day,

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and expiring at the conclusion of the election.

**Employee** a person employed by the Organisation on an ongoing or fixed term full-time or part-time basis, or employed on a casual basis.

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

**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

5.1 **Conduct of Council During the Election Period**

Section 91A of the *Local Government (Elections) Act 1999* prescribes:

(1) A council must, within 6 months of the commencement of this section, prepare and adopt a caretaker policy governing the conduct of the council and its staff during the election period for a general election.

(2) Subject to this section, the caretaker policy must, as a minimum, prohibit the making of a designated decision during the election period.

(3) If a 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 this section to the designated decision specified in the application.

(4) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the designated decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.

(5) A designated decision made by a council in contravention of this section or the caretaker policy of the council is invalid.

(6) Any person who suffers any loss or damage as a result of acting in good faith on a designated decision made in contravention of this section or a caretaker policy is entitled to compensation from the council for that loss or damage.
(7) The caretaker policy of a council is to be taken to form part of each code of conduct required to be prepared and adopted in relation to council members and staff under the Local Government Act 1999 or the City of Adelaide Act 1998.

5.2 Designated Decisions

The Council is prohibited from making designated decisions during the Caretaker Period. A designated decision means a decision:

(a) relating to the employment or remuneration of a chief executive officer, other than a decision to appoint an acting chief executive officer

(b) to terminate the appointment of a chief executive officer; or

(c) 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; 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 for election).

5.3 Designated Decision Exclusions

(1) For the purposes of section 91A of the Act, the following kinds of decisions are excluded from the definition of designated decision:

(a) The decision is to enter into a contract, arrangement or understanding (other than a prescribed contract) for 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 year and:

(i) relates to the carrying out of works in response to an emergency or disaster within the meaning of Emergency Management Act 2004, or under Section 298 of the Local Government Act 1999; or

(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

(iii) relates to the employment of a particular Council employee (other than the Chief Executive Officer); or
(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.

(b) The decision relates to the suspension of a Chief Executive Officer for serious and wilful misconduct.

5.4 Council Resources

Council resources, includes but is not limited to, funds, employees, facilities, hospitality services, equipment, communications channels, events, media services and stationery will be used exclusively for normal Council business during the caretaker period, and will not be used in connection with any electioneering or campaign activity.

Council logos, letterheads, or other material such as photographs sourced by Council will not be used in connection with any electioneering or campaign activity.

5.4.1 Council Communications

Council communications includes print, electronic, digital and web based materials.

This Policy does not prevent Council from providing information, education and publicity regarding elections, electoral processes and participation, as required by Section 12(b) of the Local Government (Elections) Act 1999.

For any legislated publications that are required to be published during an election period, including the Annual Report, the content contained relating to Council Members will be restricted to that required by the Local Government Act 1999 and relevant Regulations.

Any media related matters or enquiries during an election period will be dealt with in accordance with Council’s Media Policy. No media advice or assistance will be provided to Council Members in relation to election campaign matters.
6. Responsibilities

The Chief Executive Officer will ensure, as far as possible, that all Council Members and employees are informed of the application of the Caretaker Policy prior to the commencement of the election period.

Governance is responsible for providing support to Council Members and Council employees in the application of the Caretaker Policy during an election period.

7. Relevance to Strategic Plan

1: Smart Service Delivery Program
Outcome 1.2 Improved service delivery

The Caretaker Policy ensures Council meets the legislative obligations in accordance with Section 91A of the *Local Government (Elections) Act 1999* and specifies how Council operates during an election period.

8. Accessibility

The Caretaker Policy is available on Council’s website and internally in Council’s Corporate Policy Library on Click.

9. Feedback

We invite your feedback on this policy which can be directed to the Manager Governance to playford@playford.sa.gov.au.

10. Approval and Change History

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<thead>
<tr>
<th>Version</th>
<th>Approval Date</th>
<th>Approval By</th>
<th>Change</th>
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<tbody>
<tr>
<td>1</td>
<td>9 March 2010</td>
<td>Council – Resolution No. 1530</td>
<td>New Policy</td>
</tr>
<tr>
<td>2</td>
<td>31 January 2012</td>
<td>Council – Resolution No. 623</td>
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<tr>
<td>3</td>
<td>26 November 2019</td>
<td>Council – Resolution No. 3838</td>
<td>Transferred to corporate policy template. Discretionary sections including major policy decisions, caretaker decisions, community engagement and information request requirements removed.</td>
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