

2. BACKGROUND

Federal and State Governments have adopted caretaker conventions which prohibit major decision making during the time an election has been announced and when polling finishes. Section 91 A of the Local Government (Elections) Act requires that Local Governments develop a caretaker policy.

The purpose of a Caretaker Policy is to ensure that the ordinary business of local government continues throughout the election period in a responsible and transparent manner, and in accordance with statutory requirements and established 'caretaker' conventions.

The Caretaker Policy also ensures that staff can remain independent in their dealings with Councillors and regulates the information provided from staff to Councillors.

3. POLICY OBJECTIVES

The primary objective of this Caretaker Policy is to avoid the City of Playford making major decisions, prior to an election, that would bind an incoming Council or Committee, prevent the use of public resources in ways that are seen as advantageous to, or promoting, the sitting Councillors who are seeking re-election, or new candidates, and ensuring the City of Playford administration acts impartially in relation to candidates.

This Policy applies during a 'Caretaker Period' (see below for a definition) to cover:

- (a) decisions that are made by the Council;
- (b) materials published by the Council;
- (c) attendance and participation in functions and events;
- (d) use of the Council's resources;
- (e) access to Council information.

4. LEGISLATION AND REFERENCES

Section 91A of the Local Government (Elections) Act 1999 requires that Council develop a Caretaker Policy. The Act sets out what activities are prohibited and allows the Council to further develop policies for council activity during the election period. The Local Government (Elections) Regulations 2010 also outlines decisions that are exempt from the prohibited decisions outlined in the Act.

The relevant provisions are provided here:

Local Government (Elections) Act 1999

An Act to regulate the conduct of local government elections; and for other purposes.

91A—Conduct of council during election period

- (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.*
- (8) *In this section—*

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; or*
- (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),*

other than a decision of a kind excluded from this definition by regulation;

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,*

and expiring at the conclusion of the election;

prescribed contract means a contract entered into by a council for the purpose of undertaking—

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

Local Government (Elections) Regulations 2010
under the *Local Government (Elections) Act 1999*

12—Conduct of council during election period

- (1) *For the purposes of section 91A of the Act, the following kinds of decisions are excluded from the definition of **designated decision**:*
- (a) *a decision of a kind referred to in paragraph (c) of the definition 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, 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) *a decision of a kind referred to in paragraph (a) of the definition if the decision is for the suspension of a chief executive officer for serious and wilful misconduct.*
- (2) *In this regulation—*
election period *has the same meaning as in section 91A of the Act.*

5. PROCEDURES

5.1 Length of Caretaker Period

The caretaker period will begin from the day of close of nominations and expire at the conclusion of the election.

5.2 Role of Chief Executive Officer

The Chief Executive Officer will ensure as far as possible, that all Councillors and staff are informed of the application of this policy 30 days prior to the commencement of the Caretaker Period.

The Chief Executive Officer will ensure as far as possible, that matters of Council business requiring major policy or significant decisions are scheduled for Council to enable resolution prior to the commencement of the Caretaker Period, or deferred where appropriate for determination by the incoming Council.

5.3 Major Policy Decisions

During the caretaker period the Council will deal with matters that meet legislative provisions and will not make any major policy decisions that bind the incoming Council. These requirements however do not preclude the Council making decisions where the issue:

- (i) is urgent; and
- (ii) is significant; and
- (iii) cannot be reasonably deferred without major negative repercussions; and
- (iv) where the decision relates to the completion of an activity already undertaken and endorsed by Council eg. Via the Budget, Council Plan or long term strategies or policies.

5.3.1 Caretaker Decision

In each report brought before the Council during the Caretaker Period, the Council will include an initial decision (Decision 1) for the Council to assess why the item should or should not be considered by the Council during the Caretaker period. This will assist Councillors in being transparent as to why they will chose to consider the important decision during the caretaker period.

It will be the responsibility of the Chief Executive Officer to initially determine if a matter is significant, if it is urgent and whether the decision cannot be reasonably deferred. This will then be presented in the analysis of Decision 1.

The analysis will have the following questions that must be answered:

1. Is this matter a major policy decision?
2. Should this matter be postponed till after the election?
3. Is this matter urgent and significant and cannot be deferred without major negative repercussions?
4. Does this matter require the expenditure of unbudgeted funds?
5. Is the matter the completion of an activity already undertaken and endorsed by Council?
6. Does this matter require community engagement?

The aim of Decision 1 is to assess whether the decision should be deferred as a decision for the next Council membership (ie. after the election).

In the context of a Caretaker Policy, a 'major policy' decision will be defined as meaning any decision:

- to spend any unbudgeted items
- to conduct unplanned community engagement
- to endorse policies
- to approve council community grants (at the Elected Member Body level)
- any other issues that are considered a major policy decision by the Chief Executive Officer.

The Council during the caretaker period may not make any decision:

- relating to the employment or remuneration of a chief executive officer, other than a decision to appoint an acting chief executive officer; or
- to terminate the appointment of a chief executive officer; or
- 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
- 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)

(prescribed contract means a contract entered into by a council for the purpose of undertaking—

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

The Local Government (Elections) Regulations outlines decisions that are exempt from being “designated decisions” that cannot be made during the Caretaker Period. Those decisions are exempt of this policy.

In reports to Council or a Committee, Staff shall only provided options that can be implemented by the Council at that meeting.

5.4 Community Engagement

Community engagement means a process which involves an invitation or invitations to individuals, groups or organisations or the community generally to comment or be involved in an issue or proposed action or proposed policy, and includes discussion of that matter with the public.

Pre-planned community engagement will be undertaken during the caretaker period to facilitate the day-to-day business of Council and to ensure matters continue to be proactively managed. However, unplanned community engagement will be brought to Council for approval where the Council will be required to assess whether it should conduct the consultation during the caretaker period using the Caretaker Decision.

All community engagement during the caretaker period will avoid express or implicit links to the election.

5.5 Council Resources

The Council will ensure that due propriety is observed in the use of all Council resources, and Council staff will be required to exercise appropriate discretion in that regard. In any circumstances where the use of Council resources might be construed as being related to a candidate’s election campaign, advice will be sought from the Chief Executive Officer.

Council resources, including offices, support staff, hospitality services, equipment and stationery will be used exclusively for normal Council business during the caretaker period, and will not be used in connection with any electioneering activity.

Reimbursements of Councillors’ out-of-pocket and travel expenses during the caretaker period will only apply to costs that have been incurred in the performance of normal Council duties, and not for expenses that could be perceived as supporting or being connected with a candidate’s election campaign.

No Council events, logos, letterheads, or other material such as photographs sourced by Council will be used for, or linked in any way to, a candidate’s election campaign.

The Chief Executive Officer or any staff will not be asked to undertake any tasks connected directly or indirectly with electioneering.

No election material or active campaigning is to be conducted at Council sponsored events or displays.

5.6 Information

The Council will recognise that all election candidates have rights to information from the Council administration. However, it is important that sitting Councillors continue to receive information that is necessary to fulfil their elected roles. Neither Councillors nor candidates will receive information or advice from Council staff that might be perceived to support election campaigns, and there will be complete transparency in the provision of all information and advice during the caretaker period.

Information and briefing material prepared by staff for Councillors during the caretaker period will relate only to items on Council meeting agendas, or to existing Council services and programs.

An Information Request Register (Appendix 1) will be maintained by the CEO commencing at the close of nominations. This Register will be a public document that records all requests for any information by candidates, and the responses given to those requests. Those responses will be provided by General Managers, Group Managers or the Chief Executive Officer.

Only information that can be reasonably accessed will be released. For example, information that has already been presented to Council or has been presented through the form of a memo. Any information required to be redrafted into a table is not reasonably accessible. All candidates have the opportunity to request information via Freedom of Information provisions separate to the Caretaker Policy.

The Register will exclude queries relating to items listed on formal Council meeting agendas during the caretaker period.

The Register will also exclude queries relating to request for information from the Mayor and Councillors that can be accessed using Section 61 of the Local Government Act or under the Council and Committee Access and Use of Council Information Policy.

5.7 Communication

Council communication will not be used in any way which might influence the outcome of a Council election. During the caretaker period, no employee will initiate any public statement that relates to an election issue unless required by the Chief Executive Officer. Contact with the media will be restricted to the communication of normal Council activities as identified in the Council Plan and will only respond to questions not involving the election or election outcome.

In response to media inquiries the Mayor, Chief Executive Officer, General Managers, Group Managers or the Strategic Communications Planner will only provide information to the media that relates to current services and operations.

During the caretaker period, Council-initiated communications other than for the purpose of conducting the election will be restricted to the communication of normal Council activities as identified in the Council Plan.

No media advice or assistance will be provided to Councillors in relation to election campaign matters or publicity which involves specific Councillors. Any requests for media advice or assistance from Councillors during the Election Period will be channelled through the Chief Executive Officer.

Councillors will not use their position as an elected representative or their access to Council staff and other Council resources or information to gain media attention in support of an election campaign. This includes photos or images provided by Council.

Councillor participation at Council sponsored community events will not be used to gain attention in support of an election campaign.

5.8 Council Publications

Council will be prohibited from printing, publishing or distributing publications containing electoral matter during an election period. Electoral matter will be any matter which is intended or likely to affect voting in an election, but will not include:

- (a) any electoral material produced by or on behalf of the returning officer or the Electoral Commission South Australia for the purposes of conducting an election, or
- (b) an advertisement in a newspaper announcing the holding of a meeting.

A publication will be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to or comment on:

- (a) the election; or
- (b) a candidate in the election; or
- (c) an issue submitted to, or otherwise before, the voters in connection with the election.

Any references to Councillor candidates in Council publications printed, published or distributed during an election period will not include promotional text.

During the election period Council's website will not contain material which is precluded by a Caretaker Policy or the statutory requirements relating to publications. Any references to the election will only relate to the election process. Any references to Councillor candidates on the website will not include promotional text. Information about Councillors will be restricted to the names of the elected representatives and contact details, membership of Committees and other bodies to which they have been appointed by the Council.

Council Newsletter *North is Up* will be allowed to be published during the caretaker period. However any references to the election will only relate to the election process and contain general information to assist in facilitating the effective conduct of the election by the Electoral Commission South Australia. References to Councillor candidates will be minimised and if included will not include promotional text. Information about Councillors will be restricted to the names of the current elected representatives and contact details as Councillors continue to represent their wards throughout the election period. In particular, page 2 which identifies which areas Councillors represent will not change until after the election. Other than page 2, the content of that edition will be restricted to Council activities as identified in the Council Plan.

The caretaker period will not restrict the printing or publication and content of other council publications.

5.9 Assistance to Candidates

The Council will reaffirm that all candidates for the Council election will be treated equally, fairly and without discrimination. Any assistance and advice to be provided to candidates as part of the conduct of the Council election will be provided equally to all candidates. The types of assistance that will be available such as Voters' Rolls will be documented and communicated to all candidates in advance.

All election related enquiries from candidates, whether sitting Councillors or not, will be directed to the Returning Officer or, where the matter is outside the responsibilities of the Returning Officer, to the Chief Executive Officer.

The Council shall provide a single point of contact for all Candidates to make any query or for information regarding Council related activities. Only one email address, one mobile phone number and one land line number will be included in all communication with candidates.

6. REVIEW AND EVALUATION

The Caretaker policy will be reviewed within twelve months after each General Council Election.

7. PUBLIC ACCESS TO THE POLICY

The Caretaker Policy is available upon request to Council's Customer Service Centres or on the Council's website.