

## POLICY DOCUMENT

9.63.17

<b>Policy Name</b>	Caretaker Policy
<b>Policy No.</b>	9.63.17
<b>Version:</b>	2
<b>Strategic Reference:</b>	
<b>Responsible Department:</b>	Corporate & Community
<b>Policy Adopted:</b>	15 August 2022
<b>Last revised date:</b>	6 August 2018
<b>Minute reference:</b>	CO 22/143
<b>Next review date:</b>	Council will review this policy before the commencement of the Caretaker Period for each general election or following significant change to legislation or aspects included within this policy.
<b>Applicable Legislation:</b>	Local Government (Elections) Act 1999 S91A Local Government Act 1999
<b>Related Policies:</b>	Employee Conduct Code of Conduct for Council Members
<b>Related Documents:</b>	LGA Caretaker Guidelines LGA Caretaker Model Policy

### 1. PURPOSE

This policy implements the statutory caretaker period requirements under section 91A of the *Local Government (Elections) Act 1999*. This policy is to ensure that Council meets its minimum legislative obligations and to address issues commonly asked or questioned by the community and the media during the caretaker period.

### 2. DEFINITIONS

In this Policy:

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

**Council employee** 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 **City of Port Lincoln**.

**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** 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:
  - 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);
  - 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;
  - relates to the employment of a particular Council employee (other than the Chief Executive Officer);
  - 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.

**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*.

**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*.

### **3. APPLICATION OF POLICY**

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 06 September 2022 and ends at the conclusion of the election, when results have been declared.

This policy applies to the Council Members and Council Employees.

### **4. PROHIBITION ON DESIGNATED DECISIONS**

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

A decision of the Council includes a decision of:

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

## 5. TREATMENT OF OTHER SIGNIFICANT DECISIONS

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:

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

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.

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

- to spend unbudgeted monies;
- to conduct unplanned public consultation;
- to endorse a new policy;
- 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 Chief Executive Officer.

The determination as to whether or not any decision is significant will be made by the Chief Executive Officer, after consultation with the Mayor.

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.

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.

The Chief Executive Officer's report to Council will address the following issues (where relevant):

- why the matter is considered 'significant';
- why the matter is considered urgent;
- what are the financial and other consequences of postponing the matter until after the election, both on the current Council and the incoming Council;
- whether deciding the matter will significantly limit options for the incoming Council;
- whether the matter requires the expenditure of unbudgeted funds;
- whether the matter is the completion of an activity already commenced and previously endorsed by Council;
- whether the matter requires community engagement;
- any relevant statutory obligations or timeframes; and
- whether dealing with the matter in the election period is in the best interests of the Council area and community.

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

## 6. CONSEQUENCE OF CONTRAVENING THIS POLICY

A designated decision made by Council during an election period is invalid, except where an exemption has been granted by the Minister<sup>1</sup>.

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<sup>2</sup>.

A breach of this Policy is a breach of the Code of Conduct for Council Members and Employee Conduct for Council Employees.

## 7. APPLICATION FOR EXEMPTION

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.<sup>3</sup>

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 employees will comply with any conditions or limitations that the Minister imposes on the exemption.<sup>4</sup>

## 8. MEDIA

Media releases will be limited to operational issues during the election period.

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.

Council will not respond to or make comment on any publicity or media inquiries involving individual candidates, election issues or individual election campaigns except if harmfully inaccurate comments are made by a candidate. In these circumstances, the Chief Executive Officer reserves the right to correct the inaccuracy.

During the election period, no media advice or support will be provided to Council Members who have nominated as candidates, or anyone acting on behalf of the candidate.

Council's social media account will only be used to promote the upcoming election process and encourage people to vote.

Council's social media account will not be used to promote any Council Member or candidate's social media accounts or link to any individual campaigns.

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<sup>1</sup> Section 91A (5) *Local Government (Elections) Act 1999*

<sup>2</sup> Section 91A (6) *Local Government (Elections) Act 1999*

<sup>3</sup> Section 91A (3) *Local Government (Elections) Act 1999*

<sup>4</sup> Section 91A (4) *Local Government (Elections) Act 1999*

## 9. CONTINUING THE FUNCTIONS OF THE COUNCIL DURING THE CARETAKER PERIOD

Nothing in this policy prevents the Mayor, Council Members and Council employees carrying on the business of the Council during the caretaker period, this includes attending training and meetings as per normal practice.

The Mayor may 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.

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.

The CEO will ensure as far as is practical that Council initiatives will not be launched during the caretaker period.

The Mayor will continue to be Council's spokesperson in the media or at other official functions.

## 10. DURING AN ELECTION PERIOD

The Chief Executive Officer will ensure that all Council employees and Council members are aware of their rights and obligations during an election period. Such as but not limited to:

- *Use of Council resources;*
- *Council publications (advertisement, pamphlet containing 'electoral material')*
- *Use of Council website;*
- *Attendance at Events and Functions;*
- *Access to Council Information;*
- *Media Services; and*
- *Public Consultation*

## 11. PROHIBITION ON THE USE OF COUNCIL RESOURCES

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

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.

The reimbursement of Council Members' out-of-pocket and travel expenses during the election period will only be applicable to costs incurred in the undertaking of normal Council business, and not for expenses that could be perceived as supporting, or being connected with, a candidate's election campaign.

The use of City of Port Lincoln provided business cards and email accounts by Council Members for electioneering activity is prohibited.

The use of City of Port Lincoln logo and other corporate branding by any candidates, or others acting on behalf of candidates, for electioneering activity is prohibited.

The use of images taken by Council staff, including those appearing on the Council website and social media platforms, by candidates, or others acting on behalf of candidates, for electioneering activity is prohibited.

Any assistance provided to candidates in terms of Council resources as part of the conduct of the general election will be provided equally to all candidates, with the types of assistance available to be documented and communicated to all candidates in advance of the election period.

**12. RELEVANT DELEGATED POWERS AND DUTIES**

Any actions or decisions made regarding this policy will be enacted upon as per Council's current Delegations Register.