Caretaker Policy

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File Number	9/POL/CARE/2
Responsible Officer	Chief Executive Officer
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Due date of next Review	Prior to next general election

1. Purpose

1.1 This is a mandatory policy pursuant to Section 91A of the *Local Government (Elections) Act 1999* (the Act).

1.2 The Policy affirms Council's commitment to fair and democratic elections based upon the 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.

2. Scope

2.1 The Policy applies throughout the election (caretaker) period for a general election to the Council, Elected Members, and Council staff commencing at the close of nominations and ceases to apply at the conclusion of the election, when results have been declared.

2.2 The Policy applies to:

2.2.1 Council; and

2.2.2 Council staff

2.3 The Policy does not apply to Supplementary Elections.

2.4 The Policy does not apply to the Council Assessment Panel, as the Panel is established under Section 83 of the *Planning, Development and Infrastructure Act 2016,* which does not make decisions which fall within the definition of designated decision.

3. Objectives

3.1 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 have a significant impact on, or unnecessarily bind, the incoming Council.

3.2 The purpose of this Policy is to clearly set the parameters that Council will operate within during an election period. Caretaker provisions are required pursuant to section 91A of the Act and are generally regarded as necessary for the promotion of transparent and accountable government during an election period.

4. Definitions

4.1 **Chief Executive Officer (CEO)** means the appointed CEO or Acting CEO or nominee

4.2 **Council Staff** is any person that is employed full-time, part-time or casually by Council who receives remuneration for their work.

4.3 **Council's Electoral Liaison Officer** is the Council employee nominated by the CEO to undertake in-house election functions.

4.4 **Designated decision** (as defined under Section 91A(8) of the Act) is a decision which prevents Council from making a resolution of the type specified (see clause 5.1 below).

4.5 **Discretionary public consultation** means consultation that is not legislatively mandated and is a process involving an invitation or invitations to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy (see clause 5.11.2).

4.6 **Elected Member** is a person elected as a member of Mid Murray Council, and includes the Mayor and Deputy Mayor.

4.7 **Election period** is the period commencing on the day of the close of nominations for a general election and expiring at the conclusion of the general election. Also known as the caretaker period.

4.8 **Electoral material** is material which is calculated (i.e., intended, or likely) to affect the result of an election (see clause 5.7.2).

4.9 **General election** means a general election of Council Members held:

a) Under section 5 of the Act; or

b) Pursuant to a proclamation or notice under the *Local Government Act 1999* (the *Local Government Act*).

4.10 **Minister** is the Minister for Local Government or other minister of the South Australian Government vested with the responsibility for the Act.

4.11 **Major policy decision** is a type of decision that the CEO should avoid scheduling for consideration during an election period (see clause 5.2.3)

4.12 **Publication** is any type of publication, including but not limited to, leaflets, newspapers, posters, email, website radio, social media etc. (see clause 5.7.3).

4.13 **Public meeting of candidates** means a meeting of the kind set out in section 91B(1) of the *Act* .

4.14 **Significant decision** is any major policy or other decision which will significantly affect the Council area or community or will inappropriately bind the incoming Council (see clause 5.2.2).

5. Policy

5.1 'Designated decisions' prohibited by the *Local Government (Elections) Act 1999*

5.1.1 Council is prohibited from making a designated decision during an election period. A decision of the Council includes a decision of:

5.1.1.1 A committee of Council; and

5.1.1.2 A delegate of Council

5.1.2 In accordance with section 91A(8) of the Act "Designated decision" means a decision:

5.1.2.1 Relating to the employment or remuneration of a CEO other than a decision to appoint an acting CEO; or to suspend the CEO for serious and wilful misconduct;

5.1.2.2 To terminate the appointment of a CEO; or

5.1.2.3 To enter into a contract, arrangement or understanding (other than a contract for road construction, 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:

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;*

II. is an expenditure or other decision required to be taken under an agreement by which funding is provided to Council by the Commonwealth or State Government or otherwise for Council to be eligible for funding from the Commonwealth or State Government;

III. relates to the employment of a particular Council employee (other than the CEO);

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 System scheme that has, prior to the election period, been approved by Council.

5.2 Treatment of other significant decisions prohibited by this Policy

5.2.1 So far as is reasonably practicable, the CEO should avoid scheduling significant decisions (including major policy decisions) for consideration during an election period and, instead, ensure that such decisions are:

- considered by Council prior to the election period; or
- 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 inappropriately bind the incoming council

5.2.3 In the context of this Policy, a 'major policy decision' may include any 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; or
- any other issue that is considered a major policy decision by the CEO that is not a designated decision.

5.2.4 The determination as to whether a major policy or other decision is significant will be made by the CEO, after consultation with the Mayor or Committee Presiding Member. The CEO must keep a record of all such determinations made by the CEO (including by previous CEO's) and make this list available to candidates upon request.

5.2.5 Where the CEO has determined that a decision is a major policy or otherwise significant decision, but circumstances arise that require the decision to be made during the election period, the CEO will report this to Council.

5.2.6 The aim of the CEO's report to Council is to assist Council to assess whether the decision should be deferred for consideration by the incoming Council.

5.2.7 The CEO's report 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 impacts and other potential consequences of postponing the matter until after the election, on both the current Council and incoming Council;

d) whether deciding the matter will bind or 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 interest of the Council area and community.

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

5.3 Prohibition on the use of Council resources

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

5.3.2 For clarity, neither the Act, nor this Policy prohibits a council providing resources to all members of the public, which incidentally includes all candidates for election.

5.3.3 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 Elected Members, where necessary, in the performance of their ordinary duties as an Elected Member:

- Mobile Phones
- Council vehicles
- Council provided landline phones, computers and other office equipment and other office equipment beyond that provided to member of the public (e.g., in a public library)
- Council provided business cards
- Requests to Council employees to perform tasks which would confer an advantage on a candidate or group of candidates
- The ability to issue invitations to Council events
- Council travel arrangements (e.g., access to Council negotiated rates for flights, accommodation or hire cars)
- Access to areas that members of the public cannot access, including areas within the property of third parties
- Council produced promotional brochures and documents

5.3.4 Despite paragraph 5.3.1, the Council may determine those Council resources that may be used by all candidates for election on an equal basis.

5.4 Consequence of contravening this Policy

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

5.4.2 Any person who suffers loss or damage as a result of acting in good faith on a designated decision made by Council in contravention of this Policy is entitled to compensation from Council for that loss or damage.

5.5 Application for exemption

5.5.1 If Council considers that it is faced with extraordinary circumstances which require the making of a designated decision during the election period, 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 Act and this Policy.

5.5.2 If the Minister grants an exemption to enable the making of a designated decision that would otherwise be invalid under section 91A of the Act and this Policy, then Council and Council staff will comply with any conditions or limitations that the Minister imposes on the exemption.

5.6 Decisions made prior to an election period

5.6.1 The Policy applies to actual decisions made during an election period, not the announcement of decisions made prior to the election period.

5.7 Publication of material during an election period

5.7.1 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, including on the Council website or social media channels, that contains electoral material during an election period.

5.7.2 For the purposes of this Policy 'electoral material' means material which is calculated (i.e., intended, or likely) to affect the result of an election. However, it does not include any materials produced by Council relating to the provision of information, education and publicity designed to announce the holding of an election or promote public participation in the electoral processes or materials produced by or on behalf of the Returning Officer for the purposes of conducting an election.

5.7.3 Elected Members are permitted to publish campaign material on their own behalf, but cannot asset that the material is originating from, or authorised by Council (e.g., using Council logos or their Council email address).

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

5.7.4 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 Elected Members will be restricted to that prescribed by the *Local Government Act* and *Regulations.*

5.7.5 Council publications produced before an election period containing material which might be construed as electoral material must not be circulated or displayed during the election period. However, these materials may be made available to members of the public upon request.

5.7.6 If the Council quarterly newsletter is scheduled to be published during the election period, the CEO may use this publication as an opportunity to promote the upcoming election.

5.7.7 Elected Member columns will not be included in the Council quarterly newsletter published during the election period. The profiles of all candidates may be included in place of the Elected Member columns.

5.8 Attendance at Events and Functions during an election period

5.8.1 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 and balls.

5.8.2 Elected Members may continue to attend events and functions staged by external bodies during an election period.

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

5.8.4 Elected Members must not give speeches or keynote addresses at Council organised or sponsored events and functions during an election period. Elected Members may, however, make short welcome remarks at Council organised or sponsored events and functions during an election period.

5.9 Media Service

5.9.1 Council's media services are directly managed by or under the supervision of the CEO and 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.

5.9.2 Any request for media advice or assistance from Elected Members during an election period will be referred to the CEO. No media advice will be provided in relation to election issues or in regard to publicity that involves specific Elected Members.

5.9.3 Media releases will not refer to specific Elected 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.

5.9.4 During the election period, publicity campaigns, other than for the purpose of conducting the election in accordance with the requirements of Section 12 (b) of the Act, will be avoided wherever possible. Where a publicity campaign is deemed necessary of a Council activity, it must be approved by the CEO.

5.9.5 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.

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

5.9.7 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 CEO.

5.10 Council Staff responsibilities during an election period

5.10.1 Prior to any election period, the CEO will ensure that all members of Council staff are advised in relation to the application of the Caretaker Policy.

5.10.2 **Correspondence**

5.10.2.1 All correspondence addressed to Elected Members will be answered by the CEO during the election period.

5.10.3 **Activities that may affect voting**

5.10.3.1 Council staff must not undertake any activity that may affect voting in the election, except where the activity relates to the election process and is authorised by the CEO.

5.10.3.2 Council staff must not authorise, use or allocate a Council resource for any purpose which may influence voting in the election, except where it relates only to the election process and is authorised by the CEO.

5.10.3.3 Council staff must not assist Elected 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 use must be reported to and advice sought from, the CEO.

5.11 Public Consultation during an election period

5.11.1 The Policy does not prevent any mandatory public consultation required by the *Local Government Act 1999* or any other Act which must be undertaken to enable Council to fulfil its functions in relation to any matter or decisions which are not prohibited by law or by this Policy.

5.11.2 Where public consultation is planned 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.

5.12 Elected Member Training and Development

5.12.1 The provisions within the *Council Member Training & Development Policy* will cease at the close of nominations and recommence once the new Council has been sworn into office, meaning that the Council will not fund any training and development activities for Elected Members during this period.

5.13 Public Meeting Provisions

5.13.1 Section 91B of the *Local Government (Elections) Act 1999* contains provisions in respect to the convening of a Public Meeting involving candidates for the general election in the period commencing after the close of nominations and prior to polling day for a General Election.

5.13.2 The requirement to hold such a Public Meeting does not apply where the Council's Caretaker Policy includes a statement, certified by the Mayor, setting out the Council's reasons for not holding a public meeting.

5.14 *Public Meeting Certification by Principal Member*

5.14.1 Council has determined that a Public Meeting involving candidates will not be held in respect of the 2026 Local Government General Election.

5.14.2 Council's reasons for not holding a Public Meeting of candidates are as follows:

Council considers that it is appropriate to maintain a clear separation between Council's administrative functions and the electoral activities of candidates. Council therefore considers that communicating candidates' policies and views should remain the responsibility of individual candidates or independent community bodies. This approach supports Council's neutrality, avoids actual or perceived involvement of Council staff and resources in electoral advocacy, and reduces the risk of any perception that a candidate has been favoured or disadvantaged.

Council notes that community groups within the Mid Murray region have previously organised and facilitated meetings equivalent to a meeting of candidates and may choose to continue to do so independently of Council.

Council has also determined that the financial and administrative costs of arranging and holding a meeting of candidates would be disproportionate to the anticipated community benefit and outweigh the benefits of such a meeting. Council is satisfied that statutory election information, candidate profiles and candidates' own communication channels, together with any independently organised candidate forums, provide electors with reasonable opportunities to inform themselves prior to voting.

Certified by:



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Mayor Simone Bailey

6. Policy Responsibility

6.1 The CEO is responsible for ensuring the proper operation of this Policy.

7. Availability/Accessibility

7.1 This Policy and Council's Fees and Charges Register are available to be downloaded free of charge from Council's website: www.mid-murray.sa.gov.au.

7.2 This Policy is available for inspection at Council's principal office during ordinary business hours. Hard copies, for a fee in accordance with Council's schedule of Fees & Charges, can be provided upon request.

8. Legislative Framework / Other References

8.1 *Local Government Act 1999*

8.2 *Local Government (Elections) Act 1999*

8.3 *Local Government (Elections) Regulations 2010*

8.4 *Behavioural Standards for Council Members*

8.5 *Employee Behavioural Standards*

8.6 *Council Member Training and Development Policy*

9. Document History

This Policy shall be reviewed at least every four (4) years or more frequently if legislation or Council requires.

Version	Adopted	Minute	Description of Change
1	10 June 2014	15802/1	Adopted
2	14 July 2015	17183/5	Minor changes
1	10 June 2014	15802/1	Adopted
2	14 July 2015	17183/5	Minor changes
2.1	December 2017		Updated with new document format and layout
3	8 October 2019	2085/1	Updated to Version 3, minimal change
4	12 July 2022	21355/2	New version to accommodate legislative changes.
	12 December 2022		Placed onto new template - no changes
5	18 August 2026	C10-26/014	Updated to Version 5, addition of clauses 5.13 & 5.14 Public Meeting Provisions