



## Caretaker Policy

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Responsible Officer	Chief Executive Officer
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## Purpose

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 *Elections Act* and generally regarded as necessary for the promotion of transparent and accountable government during an election period.

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 have a significant and material impact or effect on or unnecessarily bind the incoming Council.

## Policy

Caretaker policy is a mandatory policy pursuant to Section 91(A)(1) of the Local Government (Elections) Act 1999 ('Elections Act').

This Policy affirms Council's commitment to fair and democratic elections based on 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.

The scope of this Policy is such that it applies to decisions of Council, its Committees, delegates Council and the Chief Executive Officer.

### Prohibition on designated decisions

Council is prohibited from making a designated decision (see definitions section) and prohibited from scheduling consideration of a designated decision during an election period and includes a decision of a Committee of Council, and a delegate of Council.

This prohibition only applies to actual designated decisions made during an election period, and not to announcement of designated decisions made prior to the election period.

### 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

(See definitions section for definitions of a significant decision and a major policy decision.)

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 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 (current) Council will address the following (if relevant):

- Why the matter is considered significant
- Why the matter is considered urgent
- What the financial and other consequences are of postponing the matter until after the election, both on the current (outgoing) Council and the incoming Council
- Whether deciding the matter and implementing the decision 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
- Whether dealing with the matter in the election period is in the best interests of Council area and community;

The more urgent and imperative the (significant) decision the more justified the current Council is in implementing a significant decision during an election period; the greater the (adverse) impact on the incoming Council, the less reasonably justifiable the significant decision being made and implemented by the current Council.

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

### **Use of Council Resources**

Section 91A(8)(d) of the *Elections Act* requires Council to prohibit the use of Council resources or the advantage of a particular candidate or group of candidates. This includes a candidate or candidates who are currently elected Members of Council.

Elected Members and staff must ensure that due propriety is observed in the use of Council resources and must exercise appropriate judgement in this regard.

Council resources, including officers, support staff, hospitality services, equipment and stationery must be used exclusively for normal Council business during an election period and, must not be used in connection with an election other than uses strictly relating to the election process.

### **Council Publications during an Election Period**

#### **Prohibition on publishing certain materials during an election period**

Subject to Section 12(b) of the *Elections 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 that contains electoral material during an election period.

The Policy does not prevent publications by Council which merely announce the holding of an election or relate only to the election process itself for the purposes of Section 12(b) of the *Elections Act* or otherwise. 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 must not publish material that refers to, or comments on, an issue submitted to or is otherwise before voters in connection with the election.

Elected 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 or their Council email address).

### **Council website**

During an election period, new material which is prohibited by this Policy must not be placed on Council website. Any information which refers to the election must only relate to the election process by way of information, education or publicity. Information about Elected Members must be restricted to names, contact details, titles, membership of committees and other bodies to which they have been appointed by the Council.

The Council's website will include an express link or reference to the Local Government Association publication of candidate profiles and electoral statements for the purposes of Section 19A of the Elections Act.

### **Other Council publications**

Insofar as 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 strictly required by the *Local Government Act* and *Regulations*.

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

### **Attendance at Events and Functions during an Election Period**

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

### **Events staged by external bodies**

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

### **Council events and functions**

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



## Addresses by Elected Members

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 speeches at Council organised or sponsored events and functions during an election period.

## Addresses by Elected Members

In preparing any material concerning a Council organised or sponsored function or event which will be published or distributed during the election period, such preparation will be consistent with this section - **Council Publications during an Election Period** of this Policy.

## Application of policy

This Policy applies throughout the election period of a general election.

The Policy applies to Council and Council staff.

This Policy is to be taken to form a part of the [Code of Conduct for Council Employees](#) gazetted for the purpose of Section 110 of the *Elections Act*.

The Policy applies to:

- each periodic election of members of Council under the *Elections Act*; and
- each general election of members of Council held pursuant to a proclamation or notice under the *Local Government Act 1999*

This Policy does not apply to supplementary elections.

In this Policy:

- all references to Elected Members should be read as including the Mayor and the Deputy Mayor; and
- all references to the Chief Executive Officer should be read as including an Acting Chief Executive Officer and his/her delegate

The Policy applies during an election period of Council covering:

- a) designated decisions as defined in the *Elections Act* that are made by Council; and
- b) use of Council resources, including:
  - materials published by Council;
  - attendance and participation at functions and events;
  - access to Council information;
  - media services issues; and
  - responsibilities of Council staff
- c) other significant decisions that are made by Council

The Policy applies to both the elected Council (Elected Members), the Chief Executive Officer and to staff and captures all designated decisions of Council, a Committee of Council or a delegate of Council.



The Policy does not apply to the Council's Development Assessment Panel as the Panel is established under Section 56A of the *Development Act 1993* and does not make decisions which fall within the definition of a designated decision.

### **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.

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.

### **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 Elections Act and this policy, then the Council and Council staff must comply with any conditions or limitations that the Minister imposes on the exemption.

### **Continuing the functions of Council during the caretaker period**

This Policy does not prevent the Mayor, Council (elected) Members and staff from carrying on the business of Council during the caretaker period. The Mayor will 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.

However, the Chief Executive Officer will ensure, as far as practical, that Council initiatives will not be launched during the Caretaker period. And, the Mayor will continue to be Council's spokesperson in the media or at other official functions.



## Policy Responsibility

The Chief Executive Officer is responsible for ensuring the proper operation of this Policy

## Availability/Accessibility

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](http://www.mid-murray.sa.gov.au).

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 and Charges can be provided upon request.

## Legislative Framework / Other References

*Local Government (Elections) Act 1999 (SA) - (Elections Act)*

*Local Government Act 1999 (SA) - (Local Government Act)*

*Emergency Management Act 2004 (SA)*

*Development Act 1993 (SA)*

*Local Government (General) Regulations 2013 (SA)*

The *Elections Act* was amended in 2009 to require each Council to prepare and adopt a caretaker policy to govern the conduct of Council and its staff during the election period of a general election. Section 91A of the this Act provides that the Caretaker policy must, at a minimum, prohibit the making of certain designated decisions by Council during an election period.

## Definitions

A **Council staff member** means any person that is employed full-time, part-time or casually by Council who receives remuneration for their work.

A **Council Member** means an elected member of Mid Murray Council.

**Council resources** cover a wide range of personnel, goods, services, information and opportunities and may include:

- materials published by Council;
- attendance and participation at functions and events;
- access to Council information; and
- media services issues
- hospitality services
- equipment and stationery
- conduct of Council Members staff

An **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. For the 2018 Council elections, the day of the close of nominations is 18 September (2018) and voting closes at 5pm on 9 November (2018).



**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 election process by way of information, education or publicity, or materials produced by Council relating to the election process by way of information, education or publicity, or materials produced by or on behalf of the returning officer for the purposes of conducting an election.

An **employee** for the purposes of this Policy, employee includes Council volunteers and external contractors.

A **designated decision** means a decision:

- a) Relating to the employment or remuneration of the Chief Executive Officer, but not a decision to appoint an acting or to suspend the Chief Executive for serious and wilful misconduct;
- b) To terminate the appointment of the Chief Executive Officer
- c) To enter into a contract, arrangement or understanding (but not prescribed contracts - contracts 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:
  - i. 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*;
  - 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 Chief Executive Officer)
  - 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
  - v. Relates to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by Council
- 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).

A **General election** means a general election of (elected) Council members held:

- a) Under Section 5 of the *Elections Act*
- b) Pursuant to proclamation or notice under the *Local Government Act*

**Minister** means the Minister for Local Government or other minister of the South Australian government with responsibility for the *Elections Act*.

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):

- 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
- g) Any other issue that is considered a major policy decision by the Chief Executive Officer

A **prescribed contract** means a contract entered into by Council for the purpose of undertaking road construction or maintenance, or drainage works.

## Document History

This Policy will lapse at the next periodic election at which time the newly elected Council will be required to adopt a new policy dealing with Caretaker policy provisions.

Version	Adopted	Minute No	Description of Change
1	10 June 2014	15802/1	Policy adopted, commencing on 2 September 2014.
2	14 July 2015	17183/5	Minor changes.
2.1	December 2017		Updated with new Policy document format and layout.

