

Council Policy

Caretaker



COUNCIL POLICY

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|  <p>Adelaide Hills COUNCIL</p> | <h2 style="margin: 0;">CARETAKER</h2> |
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| Policy Number: | GOV-06 |
| Responsible Department(s): | Governance & Risk |
| Relevant Delegations: | Nil |
| Other Relevant Policies: | Council Member Conduct Code of Conduct for Council Employees Procurement & Purchasing Disposal of Land Council Members Allowances & Support Council Members Training & Development |
| Relevant Procedure(s): | Nil |
| Relevant Legislation: | <i>Local Government Act 1999</i> <i>Local Government (Elections) Act 1999</i> <i>Local Government (Elections) Regulations 1999</i> |
| Policies and Procedures Superseded by this policy on its Adoption: | Caretaker 10/06/14, Item 12.2, 35 |
| Adoption Authority: | Council |
| Date of Adoption: | 22 May 2018 |
| Effective From: | 5 June 2018 |
| Minute Reference for Adoption: | Item 12.6, 116/18 |
| Next Review: | Prior to the Election Period of the next Local Government General Election |

CARETAKER POLICY

1. INTRODUCTION

- 1.1 The *Local Government (Elections) Act 1999* (the Elections Act) was amended in 2009 to require each Council to prepare and adopt a caretaker policy to govern the conduct of the Council and its staff during the election period for a general election. Section 91A of the Elections Act stipulates that the caretaker policy must at a minimum prohibit the making of certain designated decisions by the Council during an election period.

2. POLICY STATEMENT

- 2.1 It is a long established democratic 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.
- 2.2 This Policy affirms Council's commitment to fair and democratic elections, and adherence to this principle. This Policy includes a commitment to comply with the requirements of Section 91A of the Elections Act.

3. APPLICATION OF POLICY

- 3.1 This Policy applies throughout the election period for a general election. For the purposes of the Local Government Elections of November 2018, the policy commences on 18 September 2018 and ends at the conclusion of the election, when results have been declared.

4. POLICY COVERAGE

- 4.1 This Policy applies during an election period of Council to cover:
- (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 Employees; and
 - (c) other significant decisions that are made by the Council.
- 4.2 This Policy applies to both the elected Council (Council Members) and to Council Employees and captures all 'designated decisions' of Council, a committee of Council, or a delegate of the Council – refer to Clause 6.2.

- 4.3 This Policy forms part of (and is to be read in conjunction with) the Council's Council Member Conduct Policy and the Code of Conduct for Council Employees in accordance with section 91A(7) of the Elections Act.

5. INTERPRETATION

In this Policy:

- 5.1 **Chief Executive Officer** means the appointed Chief Executive Officer or Acting Chief Executive Officer or nominee for the Adelaide Hills Council.
- 5.2 **Council Employee** means any person that is employed full-time, part-time or casually by the Council who receives remuneration for their work with the Adelaide Hills Council.
- 5.3 **Council Member** means an elected member of the Adelaide Hills Council.
- 5.4 **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.

6. PURPOSE

- 6.1 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 otherwise to have a significant impact on or unnecessarily bind the incoming Council.
- 6.2 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 Elections Act and are generally regarded as necessary for the promotion of transparent and accountable government during an election period.

7. SIGNIFICANT DECISIONS

7.1 Scope

This clause applies to decisions of Council, a committee of Council, or a delegate of Council, including the Chief Executive Officer.

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

The following outlines those decisions which are expressly prohibited by section 91A of the *Elections Act*. A 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
- (b) to terminate the appointment of the 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*

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

- (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 the definition of "designated decision" by regulation

Regulation 12 of the *Local Government (Elections) Regulations 1999* (the Election Regulations) sets out those decisions referred to in Section 91A(8)(c) as excluded from the definition of a "designated decision" if the 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.*

7.3 Consequence of a making a designated decision during the election period

A designated decision made by the Council during the election period, without an exemption from the Minister, is invalid.

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

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

7.4 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 s91A of the Elections Act and this Policy.

If the Minister grants an exemption to enable the making of a designated decision that would otherwise be invalid under s91A of the Elections Act and this Policy, then the Council and Council Employees will comply with any conditions or limitations that the Minister imposes on the exemption.

7.5 Scheduling consideration of designated decisions

The Chief Executive Officer must ensure that 'designated decisions' are not scheduled for consideration during the 'election period'.

7.6 Designated decisions made prior to an 'election period'

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

7.7 Other significant decisions which are prohibited by operation of this Policy

| Prohibited Decision | Notes |
|---|--|
| Any major policy or other decisions which will significantly affect the Council area or community or will inappropriately bind the incoming Council | This is a non-legislative policy position of Council |

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, instead, ensure that such decisions:

- (a) are considered by Council prior to the election period; or
- (b) are scheduled for determination by the incoming Council.

In the context of this policy, a 'major policy' decision includes 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; and
- any other issue that is considered a major policy decision by the CEO that is not a designated decision.

7.8 Role of the Chief Executive Officer

The determination as to whether any policy decision is major or any other decision is significant will be made by the Chief Executive Officer, after consultation with the Mayor.

7.9 Considerations for urgent decisions

Where the Chief Executive Officer has determined that a decision is a major policy decision or is otherwise significant and therefore is covered by 6.7 above, and 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 to assess whether the decision should be deferred as a decision for the incoming Council.

The Chief Executive Officer's report to Council 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 and other consequences of postponing the matter until after the election, both on the current Council and the incoming Council;
- (d) Whether deciding the matter will 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 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.

8. USE OF COUNCIL RESOURCES

8.1 Use of Council resources and advantage

Council notes that Section 91A(8)(d) of the *Local Government (Elections) Act 1999* requires Council to prohibit the use of Council resources for the advantage of a particular candidate or group of candidates. This includes a candidate or candidates who are currently elected Members of the Council.

The concept of 'advantage' is broad and for the purposes of this Policy an advantage will be conferred where a decision allowing the use of Council resources favours one candidate over another.

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

- materials published by Council;
- facilities and goods owned by the Council;
- attendance and participation at functions and events;
- access to Council information;
- media services issues; and
- stationery and equipment.

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

Council resources 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.

8.2 Use of Council resources for personal benefit

The use of Council resources for personal benefit is distinct from a designated decision of a Council regarding the use of Council resources for the advantage of a particular candidate or group of candidates.

The use of Council resources for personal benefit is regulated by legislation other than s91A of the Elections Act. The use of Council resources by a Council Member for the purposes of an election campaign will be a use of those resources for personal benefit. Council Members standing for re-election to Council must take care that they only use Council resources for normal Council business and not to assist them in campaigning.

The general duties on Council Members under s62 of the *Local Government Act 1999* include offences for improper use of information or position to gain personal advantage for the Council Member or another person.

Section 78 of the *Local Government Act 1999* provides for the use of Council resource by Council Members. Section 78(3) of the Local Government Act states:

A member of a council must not use a facility or service provided by the council under this section for a purpose unrelated to the performance or discharge of official functions or duties (unless the use has been approved by the council and the member has agreed to reimburse the council for any additional costs or expenses associated with this use).

The Code of Conduct for Council Members also prohibit the use of Council resources for private purposes without authorisation.

The use of Council resources for personal benefit in breach of these requirements could be corruption or misconduct for the purpose of the *Independent Commissioner Against Corruption Act 2012* and be the subject of a complaint to the office of Public Integrity (OPI).

Conduct of a public officer that results in a substantial mismanagement of public resources may also be the subject of a complaint to the OPI.

Disciplinary consequences or prosecutions may ultimately result from the unauthorised use of Council resources for private purposes.

8.3 Council Publications During an 'Election Period'

8.3.1 Prohibition on publishing certain materials during an 'election period'

A decision by Council to publish information for the advantage of a particular candidate or group of candidates (other than a decision which allows for the equal use of Council resources by all candidates for election) is a designated decision and is prohibited by s91A of the Elections Act. Publishing includes publication by any medium, including but not limited to leaflets, newspapers, posters, email, websites, radio or television.

Council have a statutory responsibility to publish certain information regarding general elections. Under s12(b) of the Elections Act, Council is responsible for the provision of information, education and publicity designed to promote public participation in the electoral processes for its area, to inform potential voters about the candidates who are standing for election in its area and to advise its local community about the outcome of the elections conducted in its area.

All election materials published by Council should fall within the types of material described in s12(b) of the Elections Act and not contain any material which would advantage a particular candidate or candidates.

'Electoral material' is defined in the Elections Act as 'an advertisement, notice, statement or representation calculated to affect the result of an election or poll'. Given that the purpose of electoral material is to persuade voters towards a particular candidate or group of candidates, it will not be appropriate for Council to publish electoral material.

Council Members are, however, permitted to publish campaign material on their own behalf (provided that they comply with ss 27 and 28 of the Elections Act),. Council Members should not assert or imply that the electoral material originates from or is endorsed by, Council. A Council Member also should not use Council resources to create or distribute his or her electoral material, including through the use of Council stationary, computers, printers, photocopiers, Council Employees or the application of Council logos.

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

8.3.2 Council website

During an 'election period', new material which is prohibited by this Policy will not be placed on the Council website. Any information which refers to the election will only relate to the election process by way of information, education or publicity. Information about Council Members will 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 Elections Act

8.3.3 Other Council publications

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 Council Members will be restricted to that strictly required by the *Local Government Act 1999* 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.

8.4 Attendance at Events and Functions During an Election Period

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.

A key consideration is the capacity in which they have been to the event. If they have been invited as a Council Member (i.e. Councillor Smith is invited to..) then their attendance will be in the course of Council duties. If however they are invited in a private capacity (i.e. Mr Smith is invited to...) then their attendance will not be taken to be in the course of Council duties.

It is therefore important for the Council Member to clarify the nature of the invitation to the event and prudent for the Council Member to use their best endeavours to clarify to event participants the capacity in which they are attending, particularly if intending to address the participants or undertake campaigning activities.

8.4.1 Events etc staged by external bodies

Council Members may continue to attend meeting, events and functions staged by external bodies during an election period. This includes but is not limited to LGA and regional LGA meetings, including the LGA Annual General Meeting held in October.

8.4.2 Council organised 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.

8.4.3 Addresses by Council Members

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

8.4.4 Publication of promotional material

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 Clause 7.3 of this policy.

8.5 Access to Council Information

Council Members continue during an election period to have a statutory right under s61 of the *Local Government Act 1999* to access Council information relevant to the performance of their functions as a Council Member. This right should be exercised with caution and limited to matters that the Council is dealing with within the objectives and intent of this Policy. Any Council information so accessed that is not publicly available must not be used for election purposes.

Council Members should take care that access to Council documents is in connection with the performance or discharge of their functions or duties of the member. Access to Council documents for the purpose of campaigning or to gain an advantage in an election is an improper use of information gained by virtue of the Council Member's position as a member of Council.

All candidates (including those that are Council Members) have equal rights of access to public information relevant to their election campaigns from Council administration. Neither Council Members nor candidates will be provided with information or advice from Council Employees that might be perceived to support an election campaign, and there shall be transparency in the provision of all information and advice during an election period.

8.5.1 Information and briefing material

Information and briefing material prepared or secured by Council Employees for a Council Member during an election period must be necessary to the carrying out of the Council Member's role and, where appropriate, provided to any candidate seeking the same information. Queries by Council Employees regarding the provision of information will be directed to the Chief Executive Officer in the first instance.

8.6 Media Service

Council's media services are directly managed by or under the supervision of the Chief Executive Officer, 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.

8.6.1 Media advice

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

8.6.2 Media releases / spokespersons

Media releases will not refer to specific Council Members during an election period. Where it is necessary to identify a spokesperson in relation to an issue, the Chief Executive Officer will generally be the appropriate person.

8.6.3 Publicity campaigns

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 Elections Act, will be avoided wherever possible. Where a publicity campaign is deemed necessary for a Council activity, it must be approved by the Chief Executive Officer.

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.

8.6.4 Council Members

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

8.6.5 Council Employee Public Statements

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 Chief Executive Officer.

8.7 Stationary and Equipment

8.7.1 Council branding and stationery

No Council logos, letterheads, or other Council branding or Council resources or facilities may be used for, or linked in any way with, a candidate's election campaign.

8.7.2 Equipment and facilities

Equipment and facilities provided to Council Members for the purpose of conducting normal Council business (i.e. iPads, phones, and vehicles) must not be used for campaigning purposes.

9. COUNCIL MEMBER CORRESPONDENCE DURING AND ELECTION PERIOD

9.1 All correspondence addressed to Council Members regarding Council business will continue to be forwarded to the Council Member.

9.2 Correspondence received directly by Council Members (e.g. direct mail, email) can continue to be answered directly by the Council Member.

9.3 Council Members should be mindful of their obligations under s62(4) of the *Local Government Act 1999* regarding making improper use of their position as a member of the council for advantage and also the obligations under the *State Records Act 1997* and the Council's *Records and Information Management Policy*.

10. COUNCIL EMPLOYEE RESPONSIBILITIES DURING AND ELECTION PERIOD

Prior to any election period, the Chief Executive Officer will ensure that all Council Members of and Council Employees are advised in relation to the application of this Caretaker Policy.

10.1 Activities that may affect voting

Council Employees in the course of their duties must not:

- (a) Undertake an activity that may affect voting in the election, except where the activity relates to the election process and is authorised by the Chief Executive Officer;

- (b) Authorise, use or allocate a Council resource for any purpose which may influence voting in the election, except where it only relates to the election process and is authorised by the Chief Executive Officer; and
- (c) Assist Council 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 incident must be reported to and advice sought from the Chief Executive Officer.

11. EQUITY IN ASSISTANCE TO CANDIDATES

Council confirms that all candidates for the Council election will be treated equally.

11.1 Candidate assistance and advice

Any assistance and advice provided to candidates as part of the conduct of the Council elections will be provided equally to all candidates. The types of assistance that are available will be documented and communicated to candidates in advance.

11.2 Election process enquiries

All election process enquiries from candidates, whether current Council Members or not, are to be directed to the Local Deputy Returning Officer or, where the matter is outside of the responsibilities of the Local Deputy Returning Officer, to the Chief Executive Officer or his/her nominee.

11.3 Expenses incurred by Council Members

Payment or reimbursement of costs relating to Council Members out-of-pocket expenses incurred during an election period will only apply to necessary costs that have been incurred in the performance of normal Council duties. No reimbursements will be provided for campaigning, or for expenses that could be perceived as supporting or being connected with a candidate's election campaign.

12. PUBLIC CONSULTATION DURING AN 'ELECTION PERIOD'

12.1 Prohibition

It is prohibited under this Policy for discretionary public consultation to be undertaken during the 'election period' on an issue which is contentious unless Council specifically resolves otherwise.

For the purpose of this provision, discretionary public consultation means consultation which is not legislatively mandated and is a process which involves an invitation or invitations to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy.

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

12.2 Approval for public consultation

Where public consultation is approved 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 as set out at clause 10.1 above.

13. HANDLING CODE OF CONDUCT COMPLAINTS DURING AN ELECTION PERIOD

13.1 Any complaint against a Council Member who is also a candidate for re-election made under the Council's Council Member Conduct Policy during an election period will not be heard or determined by the Council during that period.

13.2 The Chief Executive Officer, upon receiving a complaint against a Council Member, who is also a candidate for re-election about conduct relating to the Council's Council Member Conduct Policy, will assume the responsibilities allocated to the Mayor in the Code of Conduct Complaint Handling Procedure under the Council Member Conduct Policy.

13.3 If the Council Member against whom the complaint is made is not returned to office after the election, the complaint will lapse.

13.4 Council recognises that the Electoral Commissioner has the role of investigating any alleged breach of the *Local Government (Election) Act 1999*, including alleged illegal practices.

14. DELEGATION

14.1 The Chief Executive Officer has the delegation to:

- Approve, amend and review any procedures that shall be consistent with this Policy; and
- Make any formatting, nomenclature or other minor changes to the Policy during the period of its currency.

15. AVAILABILITY OF THE POLICY

15.1 This Policy will be available for inspection at the Council's Offices during ordinary business hours and via the Council's website www.ahc.sa.gov.au. Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.