



DISTRICT COUNCIL OF
OROROO/CARRIETON
Southern Flinders Ranges • Established 1997

Caretaker Policy

Version 3.0

Caretaker Policy

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INTRODUCTION

The *Local Government (Elections) (Miscellaneous) Amendment Act 1999* was assented to on 5 November 2009 and brought into effect on 21 December 2009. This Act provides for a number of amendments to the *Local Government (Elections) Act 1999*, the most important of which for these purposes is the introduction of mandatory caretaker provisions. These provisions require the adoption of a caretaker policy to govern the conduct of the Council (Council Members) and its staff during the election period for a general election.

This Caretaker Policy has been prepared by the Local Government Association of South Australia in conjunction with Wallmans Lawyers as a document for consideration by Councils to meet their legislative obligations under Section 91A of the *Local Government (Elections) Act 1999*.

The policy is prepared upon the basis that it meets the legislative obligations of Councils under Section 91A and proposes additional discretionary 'caretaker conventions'. Upon this basis the policy identifies options for the Council in terms of the date of commencement of the 'election period' being the date upon which the caretaker provisions become operative and the inclusion of 'significant decisions' and other conduct over and above the mandatory inclusions which the Council may choose to control during the election period (and the conferral of responsibilities on the Chief Executive Officer in this regard).

In this context, the Council must adopt a caretaker policy which meets the requirements of the Act and may include in that policy any or all of the discretionary requirements set out in the model policy for consideration.

1. POLICY STATEMENT

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.

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 *Local Government (Elections) Act 1999*.

2. APPLICATION OF POLICY

This Policy applies to:

- each periodic election of members of the Council under the *Local Government (Elections) Act 1999*; and
- each general election of members of the 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 'Council Members' should be read as including the Mayor/Chairperson and the Deputy Mayor/Chairperson; and
- All references to the Chief Executive Officer should be read as including an Acting Chief Executive Officer and his/her delegate.

3. OUTLINE

This Policy applies during an '*election period*' of Council to cover:

- (a) designated decisions as defined in the *Local Government (Elections) Act 1999* 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;

This Policy applies to both the elected Council (Council Members) and to staff and captures all 'designated decisions' of Council, a committee of Council, or a delegate of the Council – refer to Clause 6.2.

This Policy forms part of (and is to be read in conjunction with) the Council's Code of Conduct for Council Members and the Code of Conduct for Employees in accordance with section 91A(7) of the *Local Government (Elections) Act 1999*.

This Policy applies to all general elections¹.

4. 'ELECTION PERIOD'

During an 'election period', Council must assume a '*Caretaker mode*', which means that it:

- must avoid designated decisions which are prohibited by section 91A of the *Local Government (Elections) Act 1999* (refer clause 6.2);

An '*election period*':

- (a) **commences** on the day of the close of nominations for the election; and
- (b) **terminates** at the 'conclusion of the election' (as defined at Section 4(2) of the *Local Government Act 1999*) for the relevant periodic or general election being the time at which the last result of the election is certified by the returning officer.

5. PURPOSE

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.

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 *Local Government (Elections) Act 1999* and are generally regarded as necessary for the promotion of transparent and accountable government during an 'election period'.

6. SIGNIFICANT DECISIONS

6.1 Scope

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

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

The following table outlines those decisions which are expressly prohibited by section 91A of the *Local Government (Elections) Act 1999*.

Designated Decisions

- (a) A decision relating to the employment or remuneration of the Chief Executive Officer, (other than a decision to appoint an acting Chief Executive Officer) other than a decision of a kind excluded from the definition of "designated decision" by regulation.
- (b) A decision to terminate the appointment of the Chief Executive Officer
- (c) A decision 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, other than a decision of a kind excluded from the definition of "designated decision" by regulation.

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) A decision 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.

Council notes that the *Local Government (Elections) Act 1999* stipulates that any designated decision made by the Council during the 'election period' without an exemption from the Minister is invalid. Furthermore, it also notes that the Council is liable to pay compensation to any person who suffers loss or damage as a result of acting in good faith in reliance on such an invalid designated decision.

Council, if faced with extraordinary circumstances, may apply in writing to the Minister for an exemption. Council further notes that if the Minister chooses to grant an exemption it may be subject to any conditions or limitations that the Minister considers appropriate.

6.3 Scheduling consideration of designated decisions

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

6.4 Decisions made prior to an 'election period'

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

6.5 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 an internal requirement 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'.

6.6 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/Chairperson.

6.7 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 6.5 above, and circumstances arise that require the decision to be made during the election period, the Council will consider the matter and determine whether to make the decision.

The 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.

The aim of the report is to assist Council Members assess whether the decision should be deferred as a decision for the incoming Council.

7. USE OF COUNCIL RESOURCES

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.

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.

Council Members and staff will 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.

7.1 Council Publications During an 'Election Period'

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

Subject to the operation of Section 12(b) of the *Local Government (Elections) Act 1999* 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'.

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 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.

This 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 *Local Government (Elections) Act 1999* 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 will not publish material that refers to, or comments on, an issue submitted to or is otherwise before voters in connection with the election.

Council 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 (eg by the use of Council logos).

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

7.1.2 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 the *Local Government (Elections) Act 1999*.

7.1.3 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.

7.2 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.

7.2.1 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.

7.2.2 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.

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

7.2.4 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 7.1 of this policy.

7.3 Access to Council Information

Council Members continue during an 'election period' to have a statutory right 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.

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 staff 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'.

7.3.1 Information and briefing material

Information and briefing material prepared or secured by staff 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 staff regarding the provision of information will be directed to the Chief Executive Officer in the first instance.

7.4 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'.

7.4.1 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.

7.4.2 Media releases / spokespersons

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

7.4.3 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 *Local Government (Elections) Act 1999*, 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.

7.4.4 Council Members

Council 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.

7.4.5 Council employees

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.

7.5 Council Staff Responsibilities During and Election Period

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

7.5.1 Correspondence

All correspondence addressed to Council Members will be answered by the Chief Executive Officer during the election period.

7.5.2 Activities that may affect voting

- (a) Council staff must not 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) Council staff must not 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) Council staff must not 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.

7.6 Equity in Assistance to Candidates

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

7.6.1 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.

7.6.2 Election process enquiries

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

7.6.3 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.

7.6.4 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.

7.6.5 Support staff to Council Members

Council staff who provide support to Council Members must not be asked to undertake any tasks connected directly or indirectly with an election campaign for a Council Member.

7.6.6 Equipment and facilities

Equipment and facilities provided to Council Members for the purpose of conducting normal Council business must not be used for campaigning purposes.

7.7 Public Consultation During an 'Election Period'

7.7.1 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.

7.7.2 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 7.7.1 above.

7.7.3 Community meetings

Community meetings will not be held during an 'election period'.

8. Handling Code Of Conduct Complaints During An Election Period

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

The Chief Executive Officer, upon receiving a complaint against a Council Member, who is also a candidate for re-election about conduct specifically in relation to this Policy (considered part of Council's Code of Conduct), will refer the complaint to the independent Local Government Governance Panel established by the Local Government Association for assessment and investigation.

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

An example of a serious complaint which would warrant urgent determination is where a complaint of a deliberate and wilful breach of this Policy is made, and is supported by sufficient evidence for the Chairperson of the Governance Panel to be satisfied that the conduct of the Council Member was not an honest or innocent mistake.

Where a complaint is made against a Council Member for a breach of this Policy which is deferred until after the 'election period', the Chief Executive Officer will remind the Council Member of the content of this Policy and will provide them with a copy of it.

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.

9. Further Information

A copy of this Policy is available for inspection by members of the public at the offices of Council during normal office hours, or from the Council's website. Alternatively, the public may obtain a copy for a fee fixed by Council.

Further enquiries in relation to the policy should be directed to the Chief Executive Officer, or telephone 8658 1260 or by email to council@orroroo.sa.gov.au