

Caretaker Policy

Strategic Reference	Objective1; a caring, healthy and resilient community. Strategy 1.7; achieve or implement the statutory and core responsibilities of Council.
File reference	AR18/12706
Responsibility	Community & Corporate Department
Revision Number	4
Effective date	June 2010
Last revised date	July 2018
Minutes reference	129/18, 190/14, 237/10
Next review date	Within 6 months prior to each Periodic Election
Applicable Legislation	Section 91a Local Government (Elections) Act 1999
Related Policies	
Related Documents	

1. Background

In accordance with Section 91A of the Local Government (Elections) Act 1999 (the Act), Council must adopt a caretaker policy governing the conduct of the council and its staff during the election period of a general election. At a minimum, this policy must prohibit the making of a designated decision, as defined by the Act.

Further to the above, it is the intent of this policy to ensure that the actions of Council, Council Members, and employees of the Coorong District Council do not influence the election process, provide for a fair and equitable election for all candidates, and that no decisions are made which will inappropriately bind the incoming Council.

2. Definitions

In this Policy:

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

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

Council Member means an elected member of the Coorong District Council.

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Council resources includes the use of the Council logo, letterhead, business cards, photographs, use of Council photocopiers, individually assigned devices and other equipment, Council allocated email address and the services of Council employees.

Designated decision means a decision that is prohibited by the Local Government (Elections) Act 1999.

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. The election period is known as the caretaker period.

Electoral material means an advertisement, notice, statement or representation calculated to affect the result of an election.

General election means a general election of council members held:

- a. under section 5 of the Local Government (Elections) Act; or
- b. pursuant to a proclamation or notice under the *Local Government Act 1999* (SA).

Minister means the Minister for Local Government or other minister of the South Australian government vested with responsibility for the Local Government (Elections) Act 1999.

3. Designated Decisions

The following table outlines those decisions which are expressly prohibited during an election period by section 91a of the Act.

Designated Decisions	
(a)	A decision relating to the employment or remuneration of the CEO, (other than a decision to appoint an acting CEO). Note: A decision for the suspension of a CEO for serious and wilful misconduct can be made because it is excluded from the definition of "designated decision" by regulation.
(b)	A decision to terminate the appointment of the CEO.
(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. Note: A decision excluded from the definition of a designated decision by regulation, is a decision which: (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 CEO); 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

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	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.
(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).

4. Significant Decisions

The following decisions are prohibited by the operation of this Policy.

Any major policy or other decisions which will significantly affect the Council area or community or will inappropriately bind the incoming Council.

In the context of this policy, a 'major policy' decision may include any decision:

- to spend unbudgeted monies;
- to conduct unplanned public consultation for significant issues;
- to endorse a new policy position;
- 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'.

So far as is reasonably practicable, the CEO should avoid scheduling significant decisions for consideration during an election period. The determination as to whether any decision is significant will be made by the CEO.

4. Urgent Decisions

Where the CEO has determined that a decision is a significant decision, 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.

Council will consider a report as to whether it should determine an urgent significant decision. This report will address the following issues, where relevant:

- (a) Why the matter is considered 'significant';
- (b) Why the matter is considered urgent;
- (c) The 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.

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

5. Application of Policy

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 (coinciding with open of nominations) and ends at the conclusion of the election, when results have been declared.

The policy applies to the Council, Council Members and Council staff.

It is to be taken to form part of the Code of Conduct for Council Employees gazetted for the purpose of section 110 of the Local Government Act.

6. Consequence of Contravening this Policy

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

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

A breach of this policy is a breach of the Code of Conduct for Council Members.

7. Application for Exemption

If the Council considers that it is faced with extraordinary circumstances which require the making of a designated decision during an election period, the Council may apply in writing to the Minister for an exemption to enable the making of a designated decision that would otherwise be invalid under section 91A of the Local Government (Elections) Act and this policy.

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

8. Continuing the Functions of the Council during the Caretaker Period

Nothing in this policy prevents the Mayor, Elected Members and staff carrying on the business of the Council during the caretaker period. The Mayor will continue to accept invitations to attend community functions, as will Elected 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.

The CEO will ensure as far as is practical that Council initiatives will not be launched during the caretaker period, although established events scheduled at this time will continue to be held.

Council will not allow questions or statements from the gallery during a full council meeting during the election period.

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9. Council Publications

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 that contains electoral material during an election period.

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.

All Council media and marketing campaigns will be reviewed by council staff prior to the commencement of the election period to determine if such campaigns should be continued or deferred until after the election. Any advertising, marketing or media requests during the election period will be referred to the CEO or Director Community & Corporate for approval.

10. Events & Functions

Council organised events and functions held during the election period will be reduced to only those essential to the operation of the Council. Where events and functions are held, candidates who are not currently Council Members will be invited to attend if appropriate to the type of event or function.

Guest lists for any event or function will be at the decision of the CEO only, and invitations will be addressed as being from the CEO.

The Mayor will not hold any function or event during the election period. Further the Mayor title will not be used in the title of any event or function planned for this period.

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.

11. Media releases - spokespersons

Media releases will be limited to operational issues rather than policy and/or major projects.

Where it is necessary to identify a spokesperson in relation to an issue, the CEO will be the appropriate person, unless delegated. This provision does not override the legislative role of the Mayor as the principal spokesperson of the Council. However, the Mayor, in consultation with the CEO, should consider whether it is appropriate to exercise their legislative role when necessary.

12. Public consultation during an election period

Discretionary public consultation i.e. consultation which is not required by legislation, will not occur unless approved by the CEO or his/her nominee.

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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.

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 above.

Community meetings arranged or lead by Council will not be held during an election period.

13. Council Website

Any new material which is prohibited by the Policy will not be placed on the Council website. Any information which refers to the election will only related 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 Council.

Council staff will review website content prior to the election period commencing to ensure any precluded content is removed by the beginning of the period.

14. Council Endorsement

This Policy was adopted by resolution of the Council on 16 July 2018.

15. Further Information

This policy will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge, from Council's website: www.coorong.sa.gov.au.

Coorong Civic Centre

95-101 Railway Terrace
Taillem Bend
Phone: 1300 785 277
Fax: 8572 3822

Meningie Information Hub

49 Princes Highway
Meningie

Tintinara Customer Service Centre

37 Becker Terrace
Tintinara

Copies will be provided to interested parties upon request. Email council@coorong.sa.gov.au.

Any grievances in relation to this code of conduct or its application should be forwarded in writing addressed to the CEO of Council.