

## CARETAKER POLICY

Approved	16 July 2018
Status	Statutory
Review Frequency	4 yearly; prior to Local Government Elections
Responsible Division	Resources
Last Reviewed	June 2022 (Council resolution ref: ACM221570)
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File Number	18.63.001 / PL2022133
Related Documentation	Code of Conduct for Council Members Code of Conduct for Council Employees Procurement Policy Sale and Disposal of Assets Policy Elected Members Training and Development Policy Elected Members Allowances, Benefits, Support and Benefits Policy
Applicable Legislation	<i>Local Government Act 1999</i> <i>Local Government (Elections) Act 1999</i>

### 1. Background

Alexandrina Council is required by section 91A of the Local Government (Elections) Act 1999 to adopt a Caretaker Policy and assume a 'caretaker mode' for a minimum period of seven (7) weeks prior to a periodic local government election, to avoid actions and designated functions which could be perceived as:

- intended to influence the conduct of the elections
- influencing voters
- having significant impact on candidates
- limiting the decision making ability of the incoming Council.

### 2. Purpose

This policy articulates the standards that are regarded as necessary for the promotion of transparent and accountable government during election periods.

### 3. Scope

This Policy applies throughout the election period for a general election. For the purposes of the Local Government Elections of November 2022, the Policy commences on 6 September 2022 and ends at the conclusion of the election, when all results have been declared.

This Policy applies to Council, Committees of Council, Elected Members and Administration.

### 4. Definitions

In this Policy:

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

**Advantage** means any activity that gives a perception of favouring one candidate over another.

**Chief Executive Officer** means the appointed Chief Executive Officer or Acting Chief Executive Officer or nominee.

**Council Member** means an Elected Member of the Alexandrina Council.

**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 to suspend the Chief Executive Officer for serious and willful misconduct.
- (b) to terminate the appointment of the Chief Executive Officer.
- (c) to enter into a contract, arrangement or understanding (other than a contract 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* or under section 298 of the *Local Government Act 1999*.
  - (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.
  - (iii) relates to the employment of a particular employee (other than the Chief Executive Officer).
  - (iv) is made in the conduct of negotiations relating to the employment of employees generally, or a class of 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 the Council.

**Elections Act** means 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.

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

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

**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*.

## 5. Prohibition on Designated Decisions

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

- a Committee of Council
- a delegate of Council.

## 6. Prohibition on the use of Council Resources

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

For clarity neither the *Local Government (Elections) Act 1999*, nor this Caretaker Policy, prohibits a Council providing resources to all members of the public, which incidentally includes all candidates for election.

Council resources, including officer time, community noticeboards, 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 available to all candidates.

## 7. 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.

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):

- to spend unbudgeted monies
- to conduct unplanned public consultation
- to endorse a new policy
- to engage in new leases or licences
- to dispose of Council land and/or assets
- to approve community grants or community donations
- to progress any matter which has been identified as an election issue
- any other issue that is considered a major policy decision by the Chief Executive Officer (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 the 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 Council will address the following issues (where relevant):

- why the matter is considered 'significant'
- why the matter is considered urgent
- what are the financial and other consequences of postponing the matter until after the election, both on the current Council and the incoming Council
- whether deciding the matter 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 the Council area and community.

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

The Chief Executive Officer must keep a record of all such determinations and make this list available to candidates upon request.

## 8. Other Matters

### *Council Publications*

In so far 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.

### *Attendance at Events and Functions<sup>1</sup>*

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

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

### *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 make short welcome speeches at Council organised or sponsored events and functions during an election period, but must not say or do anything that might be construed as promoting themselves for election (electioneering).

### *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.

### *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.

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<sup>1</sup> 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.

### *Handling Code of Conduct Complaints during an Election Period*

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

The Chief Executive Officer, upon receiving a complaint against an Council Member, who is also a candidate for re-election about conduct specifically in relation to this Policy (considered part of Code of Conduct), will refer the complaint in accordance with the Council Member Code of Conduct Complaint Handling Procedure.

If the complaint is, in the opinion of the independent assessor under the Council Member Code of Conduct Complaint Handling Procedure, not so serious as to warrant urgent determination, consideration of the complaint must be deferred until after the election period.

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 independent assessor to be satisfied that the conduct of the Council Member was not an honest or innocent mistake.

Council recognises that the Electoral Commissioner has the role of investigating any alleged breach of the Election Act, including alleged illegal practices.

## **9. 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 (see below).

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 and Code of Conduct for Council Employees.

## **10. 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 s.91A of the *Local Government (Elections) Act 1999* and this policy.

If the Minister grants an exemption to enable the making of a designated decision that would otherwise be invalid under s.91A of the *Local Government (Elections) Act 1999* and this policy, then Council and Administration will comply with any conditions or limitations that the Minister imposes on the exemption.

## **11. Availability of Policy**

This Policy will be available for inspection on the Council's website [www.alexandrina.sa.gov.au](http://www.alexandrina.sa.gov.au). Copies will also be provided to upon payment of a fee in accordance with Council's Schedule of Fees and Charges.