

Caretaker Policy

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Related Documents	Code of Conduct - Council Employees Behavioural Management Policy Behavioural Standards for Council Members Code of Practice – Council Meeting Procedures Procurement Policy Disposal of Council Land Policy
Applicable Legislation	<i>Local Government Act 1999</i> <i>Local Government (Elections) Act 1999</i> <i>Local Government (General) Regulations 2013</i>

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1. Purpose

- 1.1 This Policy implements the statutory caretaker period requirements under section 91A of the *Local Government (Elections) Act 1999* (the **Elections Act**).
- 1.2 This Policy also outlines with Council's approach to holding a public meeting involving candidates for a general election under section 91B of the Elections Act.
- 1.3 The Policy provides an overview of the legislative requirements contained in sections 91A and 91B of the Elections Act. Terms used in this policy align with the definitions provided by the Local Government Association and relevant legislation.

2. Scope

- 2.1 This Policy applies throughout the election period for a general election.
- 2.2 This Policy applies to:
 - the Council;
 - Committees and Advisory Groups of Council;
 - Council Members; and
 - Council Administration (Council employees).

3. Objectives

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

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 a current elected Council 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 wilful misconduct.
- (b) to terminate the appointment of the Chief Executive Officer.
- (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, 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*; 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 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.

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*.

Prescribed contract means a contract entered into by the Council for the purposes of undertaking road maintenance or drainage works.

Public Meeting means a meeting of the kind set out in section 91B of the *Local Government (Elections) Act 1999*.

Significant decision is any major decision which will significantly affect the Council area or community or will bind the incoming Council. A significant decision includes the following 'major decisions' (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 or funding;
- (f) to progress any matter which has been identified as an election issue; and
- (g) any other issue that is considered a major decision by the Chief Executive Officer.

5. Prohibition on Designated Decisions

- 5.1 Section 91A of the Elections Act applies to a decision of Council. Council is prohibited from making a designated decision during an election period.
- 5.2 A decision of the Council includes a decision made directly by the Council at a meeting or indirectly through a Council Committee, Advisory Group or other delegate or sub-delegate.

6. Prohibition on the use of Council Resources

6.1 Scope of the Prohibition

- 6.1.1 Council resources must not be used for the advantage of a particular candidate or group of candidates during the election period.
- 6.1.2 For clarity neither the Elections Act, nor this Policy, prohibits a Council providing resources to all members of the public, which incidentally includes all candidates for election.

6.2 What are Council Resources

- 6.2.1 The following council resources must not be used for the advantage of a particular candidate or group of candidates and may only be used by Council Members, where necessary, in the performance of their ordinary duties as a Council Member:
- (a) Mobile phones
 - (b) Council vehicles
 - (c) Council-provided computers (inc tablets) and other office equipment beyond that provided to members of the public (e.g. in a public library)
 - (d) Council-provided business cards
 - (e) Requests to Council employees to perform tasks which would confer an advantage on a candidate or group of candidates
 - (f) The ability to issue invitations to Council events
 - (g) Council travel arrangements (e.g. access to Council negotiated rates for flights, accommodation or hire cars)
 - (h) Access to areas that members of the public cannot access, including areas within Council facilities
 - (i) Council printed materials, including promotional brochures and documents
- 6.2.3 Council employees and contractors engaged by Council are also Council Resources.

6.3 Meaning of Advantage

- 6.3.1 The concept of 'advantage' is broad and is defined in the Macquarie Dictionary as *any state, circumstance, opportunity, or means especially favourable to success, interest, or any desired end*. In the context of section

91A of the Elections Act, the relevant advantage is in respect of being elected or re-elected.

- 6.3.2 An advantage will be conferred where Council resources can be used, or the permissible uses of the resource's favours, one (or some) candidates over others. An advantage arises when a candidate utilises resources, information or support that is not available to a candidate in an election who is not an existing Council Member.
- 6.3.3 The Ombudsman has given 'advantage' a broad interpretation. The Ombudsman's view is that any activity that gives a perception of favouring one candidate over another is an advantage.
- 6.3.4 The use of Council resources for personal advantage in breach of these requirements could be corruption or misconduct for the *Independent Commission Against Corruption Act 2012*, the *Ombudsman Act 1972* and be the subject of a complaint to the relevant authority.

7. Application for Exemption

- 7.1 If the Council considers that it is faced with extraordinary circumstances which require the making of a designated decision (as defined in this Policy) 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 1999* and this policy¹.
- 7.2 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 exemption².

8. Treatment of Other Significant Decisions

- 8.1 So far as is reasonably practicable, the Chief Executive Officer should avoid scheduling significant decisions (including major decisions) for consideration during an 'election period' and ensure that such decisions:
 - (a) are considered by Council prior to the 'election period'; or
 - (b) are scheduled for determination by the incoming Council.
- 8.2 A 'significant decision' is any major decision which will significantly affect the Council area or community or will bind the incoming Council.
- 8.3 Without limiting clause 7.2, a significant decision includes the following 'major decisions' (not being a designated decision):
 - (a) to spend unbudgeted monies;
 - (b) to conduct unplanned public consultation;
 - (c) to endorse a new policy;

¹ Section 91A(3) *Local Government (Elections) Act 1999*

² Section 91A(4) *Local Government (Elections) Act 1999*

- (d) to dispose of Council land;
 - (e) to approve community grants or funding;
 - (f) to progress any matter which has been identified as an election issue; and
 - (g) any other issue that is considered a major decision by the Chief Executive Officer.
- 8.4 The determination as to whether or not any decision is significant will be made by the Chief Executive Officer, after consultation with the Mayor. The Chief Executive Officer must keep a record of all such determinations made and make this list available to candidates upon request.
- 8.5 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.
- 8.6 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.
- 8.7 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 options for 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.
- 8.8 Council will consider the Chief Executive Officer's report and determine whether or not to make the decision.
- 8.9 The Chief Executive Officer must keep a record of all such determinations made by Chief Executive Officers (including by previous Chief Executive Officers) and make this list available to candidates upon request.

9. Other Matters

9.1 Council Publications

In so far as any Council publications, including the Annual Report, are required to be published during an 'election period', the content relating to Council Members will be restricted to that strictly required by the *Local Government Act 1999* and the relevant Regulations.

9.2 Council Spokesperson

- 9.2.1 The Chief Executive Officer will undertake the role as the Council's spokesperson in terms of media and at official functions. For clarity this replaces the Presiding Member's role as principal spokesperson under Section 58(g) of the Act.
- 9.2.2 Council Members will continue to undertake their roles as the presiding member of Council or Committee.

9.3 Attendance at Events and Functions³

- 9.3.1 A key consideration in attending an event or function is the capacity in which the Council Member has been invited. 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.
- 9.3.2 Council organised events and functions held during the election period will be reduced to only those essential to the operation of the Council.
- 9.3.3 Council Members may continue to attend events and functions during an election period.

9.4 Addresses by Council Members

Council Members attending events and functions during an election period in the course of Council duties may not say or do anything that might be construed as promoting themselves, another candidate, or commenting on the merits of any other candidate for election (electioneering).

9.5 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 on an equitable basis to any candidate seeking the same information. Any requests or queries regarding the provision of information during an election period will be referred to the Chief Executive Officer in the first instance.

9.6 Council Branding and Stationery

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

³ 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.

9.7 Handling Behavioural Standards Complaints during an Election Period

- 9.7.1 During an election period, where a complaint is made under the *Behavioural Management Policy* against a Council Member who is also a candidate for re-election, the complaint will not be considered or determined by Council during that period, except where the complaint warrants urgent determination, in order to defer non urgent matters and avoid perceptions of political influence or prejudicing the election outcome
- 9.7.2 The Chief Executive Officer, upon receiving a complaint against a Council Member, who is also a candidate for re-election, relating specifically to conduct under this Policy (which forms part of the Behavioural Management Standards), will receive, assess and manage the complaint as the *person responsible for managing the complaint* in accordance with the Behavioural Management Policy, including determining whether the complaint warrants urgent determination during the election period.
- 9.7.3 Where, following assessment under clause 9.7.2, the Chief Executive Officer determines that a complaint does **not** warrant urgent determination during the election period, consideration of the complaint must be deferred until after the conclusion of the election period.
- 9.7.4 Where a complaint has been deferred under clause 9.7.3 and the Council Member against whom the complaint is made is not returned to office following the election, the complaint will not proceed further as the person is no longer a Council Member.
- 9.7.5 An example of a complaint that may warrant urgent determination during the election period is where there is an alleged deliberate and wilful breach of this Policy, supported by sufficient evidence to satisfy the responsible person that the conduct was not an honest or innocent mistake.
- 9.7.6 Nothing in this Policy limits or affects the role of the Electoral Commissioner or any other relevant authority in investigating alleged breaches of the Election Act, including alleged illegal practices.

9.8 Council Website

- 9.8.1 During the election period, new material which is prohibited by this Policy, or that could reasonably be perceived as promoting or opposing a candidate or group of candidates, will not be placed on the Council website. Any information which refers to the election will be limited to the election process by way of information, education or publicity.
- 9.8.2 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 and will not be expanded, refreshed or enhanced during the election period.

10. Public Meeting Provisions

- 10.1 Section 91B of the Elections Act contains provisions in respect to the convening of a Public Meeting involving candidates for election in the period commencing after the close of nominations and before polling days for a General Election.

- 10.2 The requirement to hold such a Public Meeting does not apply where the Council's Caretaker Policy includes a statement, Certified by the Mayor, setting out the Council's reasons for not holding a Public Meeting.
- 10.3 Pursuant to section 91B(4) Council has determined that a public meeting of candidates will not be held in respect of general elections.
- 10.4 The Council's reasons for not holding a public meeting of candidates are:
- (a) the Council is satisfied that a meeting equivalent to a meeting of candidates will likely be arranged by another person, body or group within the Council area;
 - (b) the Council has determined that the costs of arranging and holding a meeting of candidates may be perceived to outweigh the benefits of such a meeting;
 - (c) the Council is satisfied that the other statutory mechanisms provided for in the *Local Government (Elections) Act 1999* for informing members of the public of the issues in the community relevant to the election and of the policies and views of candidates are sufficient to allow electors to make informed decisions at the election;
 - (d) the Council considers that the task of informing members of the public of the issues in the community relevant to the election and of the policies and views of candidates is best left to individual candidates rather than the Council as a body corporate; and
 - (e) the mitigation of the risks associated with Council conducting the public meetings including perceptions of bias, prejudicing future Council Member and Officer professional relationships, conduct management, and defamation proceedings.

Certified by:

A handwritten signature in blue ink, followed by the text "Principal Member".

Principal Member

11. Consequence of Contravening this Policy

- 11.1 A designated decision made by Council during an election period is invalid, except where an exemption has been granted by the Minister⁴ (see below).
- 11.2 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 damage⁵.
- 11.3 A breach of this policy may constitute a breach of Council's *Behavioural Management Policy* for Council Members, and/or the *Code of Conduct - Council Employees* as applicable.

⁴ Section 91A(5) *Local Government (Elections) Act 1999*

⁵ Section 91A(6) *Local Government (Elections) Act 1999*

12. Availability of Policy

This Policy will be available for inspection on the Council's website www.alexandrina.sa.gov.au. Copies can also be provided upon payment of a fee in accordance with Council's Schedule of Fees and Charges.