Caretaker Policy

1. Introduction

1.1 Section 91A of the Local Government (Elections) Act 1999 requires Council to adopt a Caretaker Policy to govern the conduct of the Council and its staff during an election period.

2. Strategic Plan Desired Outcomes

2.1 Delivery of good governance in Council business.

3. Our Approach

3.1 Regularly review, update and adopt leading governance, risk management and administrative practices.

4. Legislative Requirements and Corporate Policy Context

4.1 This Policy is to be read in conjunction with the Code of Conduct for Council Members and the Code of Conduct for Council Employees.

4.2 The relevant legislation is set out in the table above.

Classification: Council Policy
Policy Name: Caretaker
First Issued / Approved: 18 May 2010 C7884
Last Reviewed: 22 February 2011 C8116
8 July 2014 C9792
27 April 2017 C11157
26 November 2019 C12364
Next Review: May 2023
ECM tracking number: 1050631
Responsible Officer: Chief Executive Officer

Relevant Legislation:
- Local Government Act 1999
- Local Government (Elections) Act 1999
- Electoral Act 1985 (SA)
- Commonwealth Electoral Act 1918
- Emergency Management Act 2004 (SA)
- Independent Commissioner Against Corruption Act 2012

Related Policies:
- Code of Conduct for Council Members
- Council Member Code of Conduct Complaint Handling Procedure
- Code of Conduct for Council Employees
- Media Policy
- Code of Conduct for Volunteers
5. **Interpretation**

5.1 For the purpose of this Policy:

5.1.1 all references to Elected Members include the Mayor.

5.1.2 all references to the Chief Executive Officer (CEO) include an Acting CEO.

5.1.3 Council staff means both:

5.1.3.1 remunerated employees (whether full-time, part-time or casual); and

5.1.3.2 volunteers (who are regarded by law as a person who is, in accordance with an Act, assisting a public officer in the enforcement of the Act);

all of whom are defined as Public Officers as set out in the “Directions and Guidelines” document issued by the Independent Commissioner Against Corruption.

5.2 Definitions:

5.2.1 *Designated decision* has the same meaning as in s91A(8) of the *Local Government (Elections) Act 1999*, the details of which are set out in Clause 9.1 of this Policy

5.2.2 *Elections Act* means the *Local Government (Elections) Act 1999*

5.2.3 *Election period* means the period commencing at mid-day on the day of the close of nominations for a general election and expiring at the conclusion of the general election, namely the time at which the last result of the election is certified by the returning officer, consistent with s.91A(8) of the Elections Act and s4(2) of the *Local Government Act 1999*.

5.2.4 *General election* has the same meaning as in s4 of the *Local Government Act 1999*, namely, a general (also called "periodic") election of Elected Members (whether held under section 5 of the Elections Act or pursuant to a proclamation or notice under the *Local Government Act 1999*).

5.2.5 *Minister* means the Minister for Local Government or other Minister of the South Australian Government vested with responsibility for the Elections Act.

6. **Policy Statement**

6.1 This Policy outlines the parameters within which Council will operate during an election period (commonly called the Caretaker period). Caretaker provisions are required pursuant to s91A of the Elections Act. Council is bound by and subscribes to those requirements to promote transparent and accountable government during an election period.

6.2 During a Local Government election period, Council will operate under a Caretaker role 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. During the Caretaker period Council is prohibited from making designated decisions under s91A of the Elections Act.
7. **Application of Policy**

7.1 This policy applies throughout the election period for a general election and council will assume a caretaker role from the commencement date to the conclusion of the election, when the results have been declared.

7.2 This Policy applies to:

7.2.1 general elections of Council; and

7.2.2 actual decisions made during an election period, but not the announcement of decisions made prior to the election period.

7.3 This Policy does not apply to supplementary elections.

7.4 This Policy applies to elected Council (Elected Members) and to staff and captures all designated decisions of Council, a committee of Council, or a delegate of the Council, including the CEO.

7.5 In accordance with s91A(7) of the Elections Act, this Policy forms part of (and is to be read in conjunction with) the Council's Code of Conduct for Elected Members and the Code of Conduct for Employees.

8. **Outline**

8.1 This Policy applies during an election period of Council to:

8.1.1 designated decisions

8.1.2 the use of Council resources, including:

8.1.2.1 materials published by Council;

8.1.2.2 attendance and participation at functions and events;

8.1.2.3 access to Council information;

8.1.2.4 media services issues;

8.1.2.5 responsibilities of Council staff; and

8.1.2.6 other significant decisions that are made by the Council (as set out in Clause 10 of this Policy).

9. **Designated Decisions**

9.1 The following table outlines those decisions which are expressly prohibited by section 91A of the Elections Act (other than a decision of a kind excluded from the definition of ‘designated decision’ by the *Local Government (Elections) Regulations 2010*).

<table>
<thead>
<tr>
<th>Designated Decisions</th>
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<tbody>
<tr>
<td>(a) A decision relating to the employment or remuneration of the CEO, (other than a decision to appoint an acting CEO).</td>
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<tr>
<td>(b) A decision to terminate the appointment of the CEO.</td>
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A decision 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 (SA), or under section 298 of the Local Government Act 1999 (SA);

(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 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.

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).

9.2 Council notes that the Elections Act provides that any designated decision made by the Council during the election period without an exemption from the Minister is invalid. In addition, 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.

9.3 Council, if faced with extraordinary circumstances, may apply in writing to the Minister for an exemption pursuant to s91A(3) of the Elections Act. Any exemption granted by the Minister may be subject to any conditions or limitations that the Minister considers appropriate (s91A(4) of the Elections Act).

9.4 A decision of the Council includes a decision of a committee of Council and a delegate of Council.

9.5 The CEO must ensure that designated decisions are not scheduled for consideration during the election period.

10. Significant decisions

10.1 As well as designated decisions, certain other significant decisions are prohibited by operation of this Policy:

<table>
<thead>
<tr>
<th>Prohibited Decision</th>
<th>Notes</th>
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<tr>
<td>Any major policy or other decisions which will significantly affect the Council area or community or will inappropriately bind the incoming Council</td>
<td>This is an internal requirement of Council</td>
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</table>
10.2 So far as is reasonably practicable, the CEO should avoid scheduling significant decisions (including major policy decisions) for consideration during an election period and, instead, ensure that such decisions:

10.2.1 are considered by Council prior to the election period; or
10.2.2 are scheduled for determination by the incoming Council.

10.3 A ‘major policy’ decision includes any decision (not being a designated decision):

10.3.1 to spend unbudgeted monies;
10.3.2 to conduct unplanned public consultation;
10.3.3 to endorse a new policy;
10.3.4 to dispose of Council land;
10.3.5 to approve community grants;
10.3.6 to progress any matter which has been identified as an election issue; or
10.3.7 any other issue that is considered a major policy decision by the CEO.

10.4 The determination whether any policy decision is major, or any other decision is significant will be made by the CEO, after consultation with the Mayor.

10.5 Considerations for urgent decisions

10.5.1 Where the CEO has determined that a decision is a major policy decision or is otherwise significant and therefore is covered by 10.1 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.

10.5.2 The Chief Executive Officer will prepare a report to Council which will address the following issues, where relevant:

10.5.2.1 why the matter is considered ‘significant’;
10.5.2.2 why the matter is considered urgent;
10.5.2.3 the financial and other consequences of postponing the matter until after the election, both on the current Council and the incoming Council;
10.5.2.4 whether deciding the matter will significantly limit the options of the incoming Council;
10.5.2.5 whether the matter requires the expenditure of unbudgeted funds;
10.5.2.6 whether the matter is the completion of an activity already commenced and previously endorsed by Council;
10.5.2.7 whether the matter requires community engagement;
10.5.2.8 any relevant statutory obligations or timeframes; and

10.5.2.9 whether dealing with the matter in the election period is in the best interests of the Council area and community.

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

11. Use of Council Resources

11.1 Section 91A(8)(d) of the Elections Act 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.

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

11.2.1 materials published by Council;

11.2.2 attendance and participation at functions and events;

11.2.3 access to Council information; and

11.2.4 media services issues.

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

11.4 Council resources, including officers, support staff, hospitality services, 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.

11.5 Council will provide a single paper copy of the appropriate Voters’ Roll to each candidate within seven days of the close of nominations of any Local Government election for the City of Burnside.

11.6 Council publications during an election period

11.6.1 Prohibition on publishing certain materials during an election period

11.6.1.1 Subject to the operation of s12(b) of the Elections Act Council must not:

11.6.1.1.1 print, publish or distribute; or

11.6.1.1.2 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.

11.6.1.2 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. It does not, however, 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.

11.6.1.3 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 s12(b) of the Elections Act 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. Council will not publish material that refers to, or comments on, an issue submitted to or otherwise before voters in connection with the election.

11.6.1.4 Elected Members may publish their own campaign material, but cannot assert or imply that that material originates from, or is 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.

11.7 Council Website

11.7.1 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 Elected Members will be restricted to names, contact details, titles, membership of committees and other bodies to which they have been appointed by the Council.

11.7.2 The Council's website will include a link or reference to the publication of candidate profiles and electoral statements for the purposes of s19A of the Elections Act.

11.8 Other Council Publications

11.8.1 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 Elected Members will be restricted to that strictly required by the Local Government Act 1999 and Regulations.

11.8.2 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.

11.9 Attendance at Events and Functions

11.9.1 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.

11.9.2 Events Organised by External Bodies
11.9.2.1 Elected Members may continue to attend events and functions organised by external bodies during an election period.

11.9.3 Council Events and Functions

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

11.9.4 Addresses by Elected Members

11.9.4.1 Elected Members must not give speeches or keynote addresses at Council organised or sponsored events and functions during an election period.

11.9.4.2 Elected 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).

11.9.5 Publication of Promotional Material

11.9.5.1 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 12.1 of this Policy.

11.10 Access to Council Information

11.10.1 Elected Members continue during an election period to have a statutory right to access Council information relevant to the performance of their functions as an Elected 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.

11.10.2 All candidates (including those that are Elected Members) have equal rights of access to public information relevant to their election campaigns from Council administration. Neither Elected 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.

11.11 Information and Briefing Material

11.11.1 Information and briefing material prepared or secured by staff for an Elected Member during an election period must be necessary to the carrying out of the Elected 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 CEO in the first instance.

11.12 Media Service

11.12.1 Council’s media services are directly managed by or under the supervision of the CEO, 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.

11.13 Media Advice

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

11.14 Media Releases / Spokespersons

11.14.1 Media releases will not refer to specific Elected Members. Where it is necessary to identify a spokesperson in relation to an issue, the CEO will generally be the appropriate person.

11.15 Publicity Campaigns

11.15.1 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 CEO.

11.15.2 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.

11.16 Elected Members

11.16.1 Elected Members must 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.

11.17 Council Employees

11.17.1 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 CEO.

11.18 Council Staff Responsibilities During an election period

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

11.18.2 Correspondence

11.18.2.1 All correspondence addressed to Elected Members will be answered by the CEO during the election period.

11.18.2.2 Activities that may affect voting

11.18.2.2.1 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 CEO; and
11.18.2.2.2 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 CEO and Council staff must not assist Elected 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 CEO.

11.19 Equity in Assistance to Candidates

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

11.20 Candidate assistance and advice

11.20.1 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.

11.21 Election Process Enquiries

11.21.1 All election process enquiries from candidates, whether current Elected 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 CEO or his / her nominee.

11.22 Expenses Incurred by Elected Members

11.22.1 Payment or reimbursement of costs relating to Elected 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.

11.23 Council Branding and Stationery

11.23.1 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.

11.24 Support Staff to Elected Members

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

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

11.26 Public Consultation during an election period

11.26.1 Prohibition

11.26.1.1 Discretionary public consultation during the election period on an issue which is contentious is prohibited, unless Council specifically resolves otherwise.

11.26.1.2 For the purpose of this provision, discretionary public consultation means consultation which is not legislatively mandated, and 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.

11.26.1.3 This Policy does not prevent any mandatory public consultation required by the Local Government Act 1999, or any other legislation, 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.

11.27 Approval for Public Consultation

11.27.1 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 11.5 above.

11.28 Community meetings

11.28.1 Community meetings, including Ward Forums, will not be held during an election period.

12. Handling Code of Conduct Complaints during an election period

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

12.2 The CEO, upon receiving a complaint against an Elected 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.

12.3 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.

12.4 If the Elected Member against whom the complaint is made is not returned to office after the election, the complaint will lapse.
12.5 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 Elected Member was not an honest or innocent mistake.

12.6 Where a complaint made against an Elected Member for a breach of this Policy is deferred until after the election period, the CEO will remind the Elected Member of the content of this Policy and will provide them with a copy of it.

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

13. Availability

13.1 The Policy is available to be downloaded, free of charge, from Council’s website www.burnside.sa.gov.au

13.2 The Policy will be available for inspection without charge at the Civic Centre during ordinary business hours and a copy may be purchased at a fee as set annually by Council.

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401 Greenhill Road, Tusmore SA 5065

Telephone: 8366 4200

Fax: 8366 4299

Email: burnside@burnside.sa.gov.au

Office hours: Monday to Friday, 8.30am to 5.00pm (except public holidays)