Caretaker Policy

As required by section 91A of the *Local Government (Elections) Act*

Adoption by Council:	21 October 2026
Resolution number:	2026/360
Current version:	2
Administered by:	Director Corporate Services
Last review date:	2026
Next review date:	2031
Document number:	D26/13651
Strategic outcomes:	Proactive leadership

Related documents:	Social Media Policy Media Policy

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1. Purpose

1.1. The purpose of this policy is to comply with Council's legislative obligations,[1] and clearly set the parameters that Council will operate within during the Caretaker period.

1.2. During a Local Government election period, Council will assume a Caretaker mode, and will avoid actions and decisions which could be, or could be perceived to be, as intended to influence voters or otherwise to have a significant impact on or unnecessarily bind the incoming Council.

2. Scope

2.1. This policy applies to the period commencing on the day of the close of nominations for a general election and expires at the conclusion of the general election , when results have been declared.

2.2. This Policy applies to the Council and employees.

2.3. This Policy does not apply to supplementary elections.

3. Definitions

3.1. ***Act*** means the *Local Government (Elections) Act 1999*;

3.2. ***CEO*** means Chief Executive Officer of Council;

3.1. ***consultation*** means a process of community engagement where information is provided, and the community is formally invited to comment and make submissions to Council;

3.3. ***committee*** means a committee of Council established under section 41 of the Act;

3.4. ***community*** encompasses any person who lives, works, pays rates, conducts private or government business, visits, utilises services, facilities and public space within the Council area;

3.5. ***Council*** means Adelaide Plains Council;

3.6. ***Council Member*** means a member of Council elected or appointed in accordance with the Act or *Local Government (Elections) Act 1999*;

3.7. ***designated decision*** means a decision:

(a) relating to the employment or remuneration of the CEO, other than a decision to appoint an acting CEO or to suspend the CEO for serious and wilful misconduct;

(b) to terminate the appointment of the CEO;

(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 (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;

[1] A Caretaker period, and policy, are required pursuant to section 91A of the Local Government (Elections) Act 1999 and are regarded as necessary for the promotion of transparent and accountable government during an election period.

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(iii) relates to the employment of a particular Council employee (other than the CEO);
(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.

3.8. ***electoral material*** means material which is calculated, intended, or likely to affect the result of an election.

3.9. ***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.

3.10. ***employee*** means any person carrying our duties or performing tasks for and on behalf of Council, whether they are paid or unpaid, including staff, contractors, consultants, trainees, volunteers, students and any other person who has access to Council's electronic systems and services in a full-time, part-time or casual capacity;

3.11. ***general election*** means a general election of Council Members held:
(a) under section 5 of the *Local Government (Elections) Act 1999*; or
(b) pursuant to a proclamation or notice under the *Local Government Act 1999*;

3.12. ***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*;

3.13. ***significant decision*** means any major policy or other decision which will significantly affect the Council area or community or will bind the incoming.

4. Our Core Values

Our approach to the caretaker policy is underpinned by Council's core values:

Honesty and Integrity	Innovative and Open-minded	Leadership and Diplomacy	Professionalism	Respect	Teamwork
Building trust and loyalty with the community and within Council.	Being proactive in continually improving our services.	By acting strategically and effectively managing our relationships.	Through commitment, quality and timeliness of work delivered.	For others, acting with humility and empathy.	Through unity, cooperation and support.

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5. Prohibition of designated decisions[2]

5.1. Council is prohibited from making a designated decision during an elected period.

5.2. A decision of Council includes a decision of:

(a) a committee of Council; and

(b) a delegate of Council.

6. Treatment of other significant decisions

6.1. So far as is reasonably practicable, the CEO should avoid scheduling significant decisions (including major policy decisions) for consideration during an 'election period' ensuring that such decisions are:

a) considered by Council prior to the election period; or

b) scheduled for determination by the incoming Council.

6.2. 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 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.

6.3. The determination as to whether or not any decision is significant will be made by the CEO, after consultation with the Mayor. The CEO must keep a record of all such determinations made and make this list available to candidates upon request.

6.4. Where the CEO has determined that a decision is significant, but circumstances arise that require the decision to be made during the election period, the CEO will report this to Council. The aim of the CEO's report is to assist Council Members assess whether the decision should be deferred for consideration by the incoming Council.

6.5. The CEO'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; and
- whether dealing with the matter in the election period is in the best interests of the Council area and community.

6.6. Council will consider the CEO's report and determine whether or not to make the decision.

[2] Section 91A(2)(a) of the Local Government (Elections) Act 1999.

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7. Prohibition on the use of council resources

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

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

7.3. 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:

- mobile phones;
- council vehicles;
- council-provided landline phones, computers and other office equipment beyond that provided to members of the public (eg in a public library);
- council-provided business cards;
- requests to council employees to perform tasks which would confer an advantage on a candidate or group of candidates;
- the ability to issue invitations to council events;
- council travel arrangements (eg access to council-negotiated rates for flights, accommodation or hire cars);
- access to areas that members of the public cannot access, including areas within the property of third parties (eg a 'Mayor's Parlour' at a suburban football oval); or
- councils produced promotional brochures and documents.

8. Consequence of contravening

8.1. A designated decision made by Council during the election period is invalid, except where an exemption has been granted by the Minister.[3]

8.2. Any person who suffers loss or damage as a result of acting in good faith on a designated decision made by Council in contravention to this policy is entitled to compensation from Council for that loss or damage.[4]

9. Application for Exemption

9.1. If Council considers that it is faced with extraordinary circumstances which require the making of a designated decision during the election period, Council may apply in writing to the Minister for an exemption to enable the making of a designated decision that would otherwise be invalid.[5]

9.2. If the Minister grants an exemption to enable the making of a designated decision that would otherwise be invalid (as detailed in 9.1), then Council and employees will comply with any conditions or limitations that the Minister imposes on the exemption.[6]

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[3] Section 91A(5) *Local Government (Elections) Act 1999*

[4] Section 91A(6) *Local Government (Elections) Act 1999*

[5] Under section 91A(3) *Local Government (Elections) Act 1999* and this policy.

[6] Section 91A(4) *Local Government (Elections) Act 1999*

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10. Publication of material during election period

10.1. Council must not:[7]

- print, publish or distribute; or
- cause, permit or authorise others to print, publish or distribute on behalf of Council, any advertisement, handbill, pamphlet, or notice, including on the Council website or social media channels, that contains electoral material during an election period.

10.2. Notwithstanding the above, Council has a statutory responsibility to publish certain information regarding elections and will continue to provide information, education and publicity in order to promote public awareness and participation in the electoral process and materials produced by or on behalf of the Returning Officer (the Electoral Commission of South Australia) for the purposes of conducting an election.

10.3. Council Members are permitted to publish campaign material on their own behalf, but cannot assert that the material is originating from, or authorised by, Council (e.g., using Council logos or their Council email address).

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

10.4. 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 prescribed by the *Local Government Act 1999* and Regulations.

10.5. Council publications produced before an election period containing material which might be construed as electoral material must not be circulated or displayed during the election period. However, these materials may be made available to members of the public upon request.

11. Attendance at events and functions during election period

11.1. 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 the community and may take the form of conferences, workshops, forums, launches, promotional activities, and social occasions such as dinners, receptions, and balls.

11.2. Council Members may continue to attend events and functions staged by external bodies during the election period.

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

11.4. Council Members must not give speeches or keynote addresses at Council organised or sponsored events and functions during the election period. Council Members may, however, make short welcome remarks at Council organised or sponsored events and functions during the election period.

[7] Subject to the operation of section 12(b) of the Act.

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12. Access to information

12.1. 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.[8] 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.

12.2. Council Members should take care that access to Council documents is in connection with the performance or discharge of their functions or duties as a member. Access to Council documents for the purpose of campaigning or to gain an advantage in an election is an improper use of information gained by virtue of the Council Member's position as a member of Council.

12.3. All candidates (including those that are Council Members) have equal rights of access to public information relevant to their election campaigns from Council administration.

12.4. Neither Council Members nor candidates will be provided with information or advice from employees that might be perceived to support an election campaign, and there shall be transparency in the provision of all information and advice during the election period.

13. Media

13.1. Council's media services, which 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.

13.2. Media releases and media responses will not refer to specific Council Members during the election period. Where it is necessary to identify a spokesperson in relation to an issue during the election period, that spokesperson will be the CEO (notwithstanding Council's Media Policy).

13.3. Council publicity during the election period will be limited/restricted to communicating normal Council activities and business.

13.4. Council Members will not use their positions, or their access to employees and other resources, to gain media attention in support of an election campaign.

14. References

Local Government Act 1999
Local Government (Elections) Act 1999 (SA)
Local Government (General) Regulations 2013 (SA)
Local Government (Elections) Regulations 2010 (SA)

15. Records management

All documents relating to this policy will be registered in Council's Record Management System and remain confidential where identified.[9]

[8] Section 61 of the *Local Government Act 1999*
[9] Refer to ***Information Management Policy***.

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16. Document review

This policy will be reviewed in accordance with Council's *Policy Review Schedule* to ensure legislative compliance and its continued relevance to Council's needs, activities and programs.

17. Further information

Public Access:	Members of the community may inspect this policy (and any other related documents) free of charge at: Council's website: **www.apc.sa.gov.au;** or Council's Principal Office: **2a Wasleys Rd, Mallala SA 5502**. *A copy of this policy may be obtained on payment of a fee.*[10]
Queries:	Any queries in relation to this policy must be in writing to info@apc.sa.gov.au, marked: *Attention: Manager Governance*

[10] As outlined in Council's Fees & Charges Schedule.

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