

 Adelaide Plains Council	Caretaker Policy	
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	Administered by: General Manager – Governance and Executive Office	Last Review Date: 2022 Next Review Date: 2026
Document No: D22/1288	Strategic Objective: Proactive Leadership	

1. Objective

The purpose of this Policy is to clearly set the parameters that Council will operate within during the Caretaker period. 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.

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

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 results have been declared.

This Policy applies to:

- the Council and
- Council Staff.

This Policy does not apply to supplementary elections.

3. Definitions

Chief Executive Officer (CEO) means the appointed Chief Executive Officer or Acting Chief Executive Officer of Adelaide Plains Council or their delegate.

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 Adelaide Plains Council.

Electoral Material means material which is calculated, intended, or likely to affect the result of an election.

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.

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;
 - (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.

Significant Decision means any major policy or other decision which will significantly affect the Council area or community or will bind the incoming Council (refer clause 6).

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 (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*;

4. Policy Statement

This policy implements the statutory caretaker period requirements under section 91A of the Local Government (Elections) Act 1999.

It is an established democratic principle that outgoing elected bodies should not use public resources for election campaigning, nor make decisions which may unreasonably, inappropriately, or unnecessarily bind an incoming Council.

5. Prohibition of ‘Designated Decisions’ – Mandatory under Section 91A(2)(a) of the *Local Government (Elections) Act 1999*

5.1 The Council is prohibited from making a Designated Decision during an elected period.

5.2 A decision of the Council includes a decision of:

- a committee of Council; and
- 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:

- considered by Council prior to the election period; or
- scheduled for determination by the incoming Council.

6.2 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.

6.3 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.

6.4 The determination as to whether or not any decision is significant will be made by the CEO, after consultation with the Mayor.

6.5 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 the Council.

6.6 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.

6.7 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.

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

7. Prohibition on the Use of Council Resources – Mandatory under the *Local Government (Elections) Act 1999*

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 Caretaker Policy prohibits a council providing resources to all members of the public, 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 as a council member:

- Mobile phones.
- Council vehicles.
- Council-provided landline phones, computers and other office equipment beyond that provided to members of the public (e.g. 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 Council's administration/office buildings).
- Council's produced promotional brochures and documents.

7.4 Despite clause 7, the Council may determine those Council resources that may be used by all candidates for election on an equal basis.

8. Consequence of Contravening this Policy

8.1 A Designated Decision made by Council during the Election Period is invalid, except where an exemption has been granted by the Minister.¹

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.²

¹ Section 91A(5) *Local Government (Elections) Act 1999*

² Section 91A(6) *Local Government (Elections) Act 1999*

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 under section 91A of the *Local Government (Elections) Act 1999* and this Policy.³
- 9.2 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 1999* and this Policy, then Council and Council Staff will comply with any conditions or limitations that the Minister imposes on the exemption.⁴

10. Publication of Material during Election Period

10.1 Subject to the operation of Section 12(b) of the *Local Government (Elections) Act 1999*, Council must not:

- 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 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.

³ Section 91A(3) *Local Government (Elections) Act 1999*
⁴ Section 91A(4) *Local Government (Elections) Act 1999*

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 the 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.

12. Access to Council Information

- 12.1 Council Members continue, during an election period, to have a statutory right under s61 of the *Local Government Act* to access Council information relevant to the performance of their functions as a Council 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.
- 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 Council 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 Chief Executive Officer (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 as elected members, or their access to Council Employees and other resources, to gain media attention in support of an election campaign.

14. Conduct of Council Employees

14.1 Council Employees, in the course of their duties, 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 Chief Executive Officer;
- 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 Chief Executive Officer; and
- Assist Council Members in ways that 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 Chief Executive Officer.

15. Related Documents

Code of Conduct for Council Members

Human Resource Management Policy

LGA Caretaker Guidelines 2021

Media Policy

16. Records Management

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

17. Document Review

This Policy will be reviewed by 30 June 2026, ahead of the Local Government Elections in November 2026.

18. References

Local Government Act 1999 (SA)

Local Government (Elections) Act 1999 (SA)

Local Government (General) Regulations 2013 (SA)

Local Government (Elections) Regulations 2010 (SA)

19. Further Information

Members of the public may inspect this Policy free of charge on Council's website at www.apc.sa.gov.au or at Council's Principal Office at:

2a Wasleys Rd, Mallala SA 5502

A copy of this Policy may be obtained on payment of a fee.

Any queries in relation to this Policy must be in writing and directed to the General Manager – Governance and Executive Office.