

Caretaker Policy 2022

CONTENTS

1. Document control.....	2
2. Preamble.....	2
3. Policy purpose.....	2
4. Scope.....	2
5. Definitions.....	3
6. Policy.....	3
6.1 Designated Decisions.....	4
6.2 Other Significant Decisions.....	5
6.3 Prohibition On The Use Of Council Resources.....	5
6.4 Continuing The Functions Of The Council During The Caretaker Period.....	5
7. Relevant legislation and references.....	6
8. Further information.....	6

1. Document control

Author – name and position (to whom changes are recommended)	Therese Brunotte, Senior Civic and Elected Member Advice Officer
Reviewed by – name and position	David Stobbe, Director Corporate
Approved by (document owner)	Council
Approval date	17 May 2022
Approval ECM number	5727763
Current version number	V 2.0
Review cycle (number of years)	Review June 2026
History (previous review dates)	01/11/2011 – Reviewed and adopted by Council 15/07/2014 – Reviewed and adopted by Council 15/05/2018 – Reviewed and adopted by Council
Related policies/procedures	Caretaker Administrative Instruction ECM 5733406
Document location	Original: ECM 5727763 Published: Website

Electronic version on the intranet or website is the controlled version.

2. Preamble

The contents of and the commitments that council makes in this policy are not intended to be and should not be interpreted to be any more than a statement of the City of Onkaparinga's general position in relation to those matters, and to facilitate its aspirations wherever it is reasonable to do so.

3. Policy purpose

The purpose of this policy is to implement the statutory caretaker period requirements under section 91A of the *Local Government (Elections) Act 1999*.

During a local government 'election period' for a general election, Council will assume a 'caretaker mode' and will avoid actions and decisions which could be perceived as intended to influence voters or otherwise to have a significant impact on or unnecessarily bind the incoming Council.

4. Scope

This policy applies throughout the nominated election period for a general election.

This policy does not apply to supplementary elections.

This policy applies during an 'election period' of Council to cover:

- a) 'designated decisions' as defined in the *Local Government (Elections) Act 1999* that are made by the Council
- b) 'other significant decisions' that are made by the Council.

This policy applies to both the elected Council and to staff (as well as contractors and consultants engaged in council business) and captures all 'designated decisions' and 'other significant decisions' of the Council, a committee of the Council, or a delegate of the Council.

5. Definitions

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 under section 5 of the <i>Local Government (Elections) Act 1999</i> , or an election pursuant to a proclamation or notice under the <i>Local Government Act 1999</i> .
Minister	means the Minister for Local Government or other minister of the South Australian government vested with responsibility for the <i>Local Government (Elections) Act</i> .
Designated decision	means decisions expressly prohibited from being made by section 91A of the <i>Local Government (Elections) Act 1999</i> . (see clause 5.1 below).
Council resources	includes but not limited to: <ul style="list-style-type: none"> • materials published by Council • facilities and goods owned by the Council • attendance and participation at functions and events • access to Council information • media services.
Major policy	decision may include any decision (not being a designated decision): <ul style="list-style-type: none"> • to spend unbudgeted monies • to conduct unplanned public consultation • to endorse a new Council policy • to dispose of Council land • to approve community grants • 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.

6. Policy

It is a long 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; such as making significant appointments, entering into major contracts or undertaking or making major policy decisions.

This policy affirms Council's commitment to fair and democratic elections, and adherence to this principle. This policy includes a commitment to comply with the requirements of Section 91A of the *Local Government (Elections) Act 1999*.

6.1 DESIGNATED DECISIONS

Council, a committee of Council, a delegate of the Council, including the Chief Executive Officer and sub-delegates of the Chief Executive Officer are prohibited from making a designated decision during an elected period.

The following table outlines those decisions which are expressly prohibited by section 91A of the *Local Government (Elections) Act 1999*.

Designated Decisions	
(a)	A decision 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)	A decision to terminate the appointment of the Chief Executive Officer
(c)	<p>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 :</p> <ul style="list-style-type: none"> (i) relates to the carrying out of works in response to an emergency or disaster within the meaning of the <i>Emergency Management Act 2004</i> (SA), or under section 298 of the <i>Local Government Act 1999</i> (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); (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.

A designated decision made by the Council during the election period without an exemption from the Minister is invalid. 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.

Council, if faced with extraordinary circumstances, may apply in writing to the Minister for an exemption. If the Minister chooses to grant an exemption it may be subject to any conditions or limitations that the Minister considers appropriate.

This Policy applies to actual decisions made during an 'election period', not the announcement or implementation of decisions made prior to the 'election period'.

6.2 OTHER SIGNIFICANT DECISIONS

So far as is reasonably practicable, the Chief Executive Officer should avoid scheduling major policy decisions for consideration during an 'election period' and, endeavour to ensure that such decisions:

- (a) are considered by Council prior to the 'election period'; or
- (b) are scheduled for determination by the incoming Council.

A 'significant decision' is any major policy decision or other decision which will significantly affect the Council area community as a whole or will bind the incoming Council.

6.3 PROHIBITION ON THE USE OF COUNCIL RESOURCES

Section 91A(2)(b) of the *Local Government (Elections) Act 1999* prohibits the use of Council resources, as defined in Section 4 of this policy, 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.

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.

On 19 February 2019 Council resolved:

Conferences, dinners and similar type expenses are not supported once nominations have closed during an election period. That under extenuating circumstances if an elected member seeks exemption, the full chamber considers the merit of the request and either refuses or accepts the request and subsequent funding.

Council resources must be used exclusively for normal Council business during an 'election period', and must not be used in connection with an election (including election campaigning) other than uses strictly relating to the election process of promoting public participation in the election, informing the local community about the candidates who are standing in the elections and the outcome of the election. This requirement applies to both elected members and the administration.

Under section 12(b) of the *Local Government (Elections) Act*, each Council is responsible for the provision of information, education and publicity designed to promote public participation in the electoral processes for its area, to inform potential voters about the candidates who are standing for election in its area and to advise its local community about the outcome of the elections and polls conducted in its area.

6.4 CONTINUING THE FUNCTIONS OF THE COUNCIL DURING THE CARETAKER PERIOD

Nothing in this policy prevents the Mayor, elected members and staff carrying on the business of the Council during the caretaker period.

The Chief Executive Officer will ensure as far as is practical that Council initiatives will not be launched during the caretaker period where they are deemed to conflict with the provisions of this policy.

During the caretaker period the Mayor will continue to be Council's spokesperson in the media or at other official functions.

7. Relevant legislation and references

Code of Conduct for Council Members

Local Government Act 1999

Local Government (Elections) Act 1999

8. Further information

It is also available for inspection, downloading or printing from our website www.onkaparingacity.com.au.