Caretaker Policy

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Legislation:	*Local Government Act 1999* *Local Government (Elections) Act 1999*
Related Documents:	

CITY OF PROSPECT

1. Purpose:

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

2. Scope:

2.1 This Policy applies throughout the election period for a general election.

2.2 This Policy applies to:
- Council
- Council staff

3. Definitions:

Chief Executive Officer (CEO)	means the appointed Chief Executive Officer or Acting Chief Executive Officer or nominee
Council	means the Elected Body ie "The Chamber"
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 City of Prospect, including the Mayor
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 willful misconduct b) to terminate the appointment of the Chief Executive Officer c) to enter into a contract, arrangement or understanding (other than a contract for road construction, road maintenance or drainage works) the total value of which exceeds whichever is the greater of $100,000 or 1% of 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 Council by the Commonwealth or State Government or otherwise for 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 Council for the relevant financial year and the negotiations commenced prior to the election period v. relates to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by Council
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*
Public Meeting of Candidates	means a meeting of the kind set out in section 91B(1) of the *Local Government (Elections) Act 1999*

4. Prohibition on Designated Decisions:

4.1 Council is prohibited from making a *designated decision* during an election period.

4.2 A decision of Council includes a decision of:
- A committee of Council
- A delegate of Council.

5. Treatment of Other Significant Decisions:

5.1 So far as is reasonably practicable, the Chief Executive Officer should avoid scheduling significant decisions (including major policy decisions) for consideration during an 'election period' and ensure that such decisions:
- Are considered by Council prior to the 'election period'
- Are scheduled for determination by the incoming Council.

5.2 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.

5.3 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
- any other issue that is considered a major policy decision by the Chief Executive Officer.

5.4 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 by Chief Executive Officers (including by previous Chief Executive Officers) and make this list available to candidates upon request.

5.5 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 Council.

5.6 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.

5.7 The Chief Executive Officer'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
- whether dealing with the matter in the election period is in the best interests of the Council area and community.

5.8 Council will consider the Chief Executive Officer's report and determine whether or not to make the decision.

6. Prohibition on the Use of Council Resources:

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

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

6.3 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 (including the Mayor), 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 (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 Box' at a suburban football oval)
- Council's produced promotional brochures and documents.

7. Consequence of Contravening this Policy:

7.1 A *designated decision* made by Council during an election period is invalid, except where an exemption has been granted by the Minister.

7.2 Any person who suffers loss or damage as a result of acting in good faith on a *designated decision* made by Council in contravention of this Policy is entitled to compensation from Council for that loss or damage.

8. Application for Exemption:

8.1 If Council considers that it is faced with extraordinary circumstances which require the making of a *designated decision* during an 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.

8.2 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 must comply with any conditions or limitation that the Minister imposes on the exemption.

9. Review:

The Policy will be reviewed **once** per Council term or as required by legislation

10. Further Information:

For further information about this Policy please contact:

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