



Policy Name	Caretaker Period
Policy Number	CL07
Responsible Section	Governance
Responsible Department	Corporate Services
Date Last Adopted	January 2022
Date of Next Review	January 2026
Applicable Legislation	Local Government Act 1999 Local Government (Elections) Act 1999 Local Government (Elections) Regulations 2010
Related Governance Documents	Code of Conduct for Elected Members Elected Members Allowances & Support Policy Mayoral Specific Allowances & Support Policy Code of Conduct for Employees
City Plan Theme	Leadership

PURPOSE/OBJECTIVE

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.

This Policy implements the statutory caretaker period requirements under section 91A of the *Local Government (Elections) Act 1999 (the Act)* and in particular complies with section 91A(7) of the Act, ensuring that this policy will form part of the City of Port Adelaide Enfield's Code of Conduct for Council Members and Employees.

The objectives of the Caretaker Policy are to guide the conduct of the City of Port Adelaide Enfield during the lead up to local government elections and provides information regarding decision making during an election period to ensure that:

- the incumbent Council does not make certain decisions that will be binding on an incoming Council and limit its freedom;
- incumbent elected members do not receive (or are perceived to receive) any advantages or disadvantages over other candidates due to their current position on Council;
- the day to day business of the Council continues efficiently and as normal as possible; and
- Council resources are not diverted for or influenced for electoral purposes.

SCOPE

This Policy applies to decisions of both the elected Council (Council Members as the governing body), a committee of Council, a delegate of the Council, including the Chief Executive Officer and Council staff.

This Policy applies to:

- Each periodic election of members of the Council under the Act; and
- Each general election of members of the Council held pursuant to a proclamation or notice under the Local Government Act 1999.

This Policy does not apply to:

- Supplementary elections.

In this Policy:

- All references to 'Council Members' should be read as including the Mayor and the Deputy Mayor; and
- All references to the Chief Executive Officer should be read as including an Acting Chief Executive Officer and his/her delegate.

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

- a) designated decisions as defined in the Act that are made by Council; and
- b) use of Council resources;
- c) other significant decisions that are made by the Council.

Election Period

An 'election period':

- a) **commences** on the day of the close of nominations for the election; and
- b) **terminates** at the 'conclusion of the election' (as defined at Section 4(2) of the Local Government Act 1999) for the relevant periodic or general election being the time at which the last result of the election is certified by the returning officer.

DESIGNATED DECISIONS

Designated decisions prohibited by the Local Government (Elections) Act 1999

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) other than a decision of a kind excluded from the definition of designated decision by regulation.
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 prescribed contract) 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, other than a decision of a kind excluded from the definition of designated decision by regulation.</p> <p>A prescribed contract means a contract entered into by the Council for the purpose of undertaking road construction or road maintenance or drainage works.</p>
d)	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), other than a decision of a kind excluded from the definition of designated decision by regulation.

If the Council considers that there are extraordinary circumstances which require the making of any of the above decisions, the Council may apply in writing to the Minister for an exemption, the effect of which would be to allow such a designated decision to be made during the election period.

The Local Government (Elections) Act 1999 stipulates that any designated decision made by the Council during the election period without an exemption from the Minister is invalid.

Furthermore, it also stipulates that 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 a designated decision.

Scheduling consideration of designated decisions

The Chief Executive Officer must ensure that designated decisions are not scheduled for consideration during the election period.

Decisions made prior to an 'election period'

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

SIGNIFICANT DECISIONS

The following decisions are prohibited by the operation of this Policy.

Any major policy or other decisions which will significantly affect the Council area or community or will inappropriately bind the incoming Council.

In the context of this policy, a 'major policy' decision may include any decision:

- to spend unbudgeted monies;
- to conduct unplanned public consultation for significant issues;
- to endorse a new policy position;
- 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 that is not a 'designated decision'.

Role of the Chief Executive Officer

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

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

The determination as to whether any decision is significant will be made by the Chief Executive Officer.

Considerations for the Chief Executive Officer in giving approval

Where the Chief Executive Officer has determined that a decision is a significant decision, 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.

Council will consider a report as to whether it should determine an urgent significant decision.

This report will address the following issues, where relevant:

- a) Why the matter is considered 'significant';
- b) Why the matter is considered urgent;
- c) What are the consequences of postponing the matter until after the election, both on the current Council and the incoming Council;
- d) Whether deciding the matter will significantly limit the policy choices of the incoming Council;
- e) Whether the matter requires the expenditure of unbudgeted funds;
- f) Whether the matter is the completion of an activity already commenced and previously endorsed by Council;
- g) Whether the matter requires community engagement;
- h) Any relevant statutory obligations or timeframes; and
- i) Whether dealing with the matter in the 'election period' is in the best interests of the Council area and community.

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

USE OF COUNCIL RESOURCES

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

- materials published by Council;
- attendance and participation at functions and events;
- access to Council information; and
- media services issues.

Council Members and staff will ensure that due propriety, and compliance with Section 91A(8)(d) of the Act 1999, is observed in the use of Council resources and must exercise appropriate judgement in this regard.

Council resources, including officers, support staff, hospitality services, equipment and stationery must be used exclusively for normal Council business and, must not be used in connection with an election other than uses strictly relating to the election process.

Council Publications During an 'Election Period'

Prohibition on publishing certain materials during an 'election period'

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

- a) print, publish or distribute; or
- b) cause, permit or authorise others to print, publish or distribute on behalf of Council, any advertisement, flyer, pamphlet or notice that contains electoral material during an election period.

Council Members are, however, permitted to publish campaign material on their own behalf, but cannot assert for that material to be originating from, or authorised by, Council (e.g. by the use of Council logos).

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 Section 12(b) of the *Local Government (Elections) Act* or otherwise.

Note: The term publication should be interpreted broadly and includes electronic and web-based materials.

Electoral Material

For the purposes of this Policy "electoral material" means material which is calculated (i.e. intended or likely) to affect voting in an election. However, it does not 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.

Without limiting the generality of this definition, material will be considered to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on:

- a) the election; or
- b) a candidate in the election; or
- c) of an issue submitted to, or otherwise before, the voters in connection with the election.

Council website

During an election period, new material which is precluded 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 Council Members will be restricted to names, contact details, titles, membership of committees and other bodies to which they have been appointed by the Council.

The Council's website will include an express link or reference to the Local Government Association publication of candidate profiles and electoral statements for the purposes of Section 19A of the Local Government (Elections) Act 1999.

Other Council publications

Insofar as any Council publications, such as the Annual Report, are required to be published during an election period, the content regarding Council Members will be restricted to that strictly required by the Local Government Act 1999 and Regulations.

Council publications produced before an election period containing material which might be construed as electoral material are not to be circulated or displayed during the election period. However, they will be made available to members of the public on request.

Attendance at Events and Functions During and 'Election Period'

In this clause, reference to events and functions means gatherings of internal and 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.

Events staged by external bodies

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

Council events and functions

Council organised events and functions held during the election period will be reduced to only those essential to the operation of the Council. This may be varied by a Council resolution or where prior approval has been given by the Chief Executive Officer.

Addresses by Council Members

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

Council Members may, however, make short welcome speeches at Council organised or sponsored events and functions during an election period where prior approval is given by the Chief Executive Officer.

Recording of attendance at external meetings and functions

The noting of attendances of Council Members at external meetings and functions in attendance records may be undertaken unless in doing so the Council Member is connected with information or promotional text or images contained elsewhere in the material.

Publication of promotional material

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 must be consistent with the application of this policy.

Access to Council Information

Council Members continue to fulfil their duties during an election period and therefore 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 must not be used for election purposes.

All candidates have equal rights of access to public information relevant to their election campaigns from Council administration. Neither Council Members nor candidates will be provided with information or advice from Council staff that might be perceived to support election campaigns, and there shall be transparency in the provision of all information and advice during an election period.

Information and briefing material

Information and briefing material prepared or secured by staff for a Council Member during an election period must be necessary to the carrying out of the Council Member's role and must not be related to election issues or to issues that might be perceived to be of an electoral nature.

Information Request Register

An Information Request Register will be maintained by the Governance Team during an election period. This Register will record all requests for information made by Council Members and candidates, and the response given to those requests, during the election period. Staff will be required to provide details of requests to the Senior Governance Advisor for inclusion in the Register. The Register may be viewed upon request at the Civic Centre.

Media advice

Council's media services are directly managed by or under the supervision of the Chief Executive Officer and are provided solely to promote Council activities or initiatives. They must not be used in any manner that might favour a candidate during an election period.

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

If satisfied that advice sought by a Council Member during an election period does not relate to the election or publicity involving any specific Council Members, the Chief Executive Officer may authorise the provision of a response to such a request.

Media releases / spokespersons

Media releases will not refer to specific Council Members. Where it is necessary to identify a spokesperson in relation to an issue, the Chief Executive Officer will determine the appropriate person.

Publicity campaigns

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 Local Government (Elections) Act 1999, will be avoided wherever possible. Where a publicity campaign is deemed necessary for a Council activity, it must be approved by the Chief Executive Officer.

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.

Council employees

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 Chief Executive Officer beforehand.

Council's Social Media

Social media will be used only for Council's ordinary business and will not be used for electoral material except for information about the conduct and processes of the election.

Council's Social Media platforms will be monitored during the Election Period and any candidate electoral material will be removed at the discretion of the Chief Executive Officer or authorised delegate.

Council Staff Responsibilities During an Election Period

Correspondence

All correspondence addressed to Council Members will be answered by the Chief Executive Officer or delegate during the election period.

Activities that may affect voting

- a) 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 Chief Executive Officer;
- b) 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 Chief Executive Officer; and
- c) Council staff must not assist Council 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 Chief Executive Officer.

Equity in Assistance to Candidates

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

Candidate assistance and advice

Any assistance and advice provided to candidates as part of the conduct of the Council Election will be provided equally to all candidates. The types of assistance that are available will be documented and communicated to candidates in advance.

Election process enquiries

All election process enquiries from candidates, whether current Council Members or not, will be directed to the Returning Officer or, where the matter is outside of the responsibilities of the Returning Officer, to the Chief Executive Officer.

Correspondence

General correspondence addressed to Council Members will be answered as usual. However, Council Members will sign only the necessary minimum of correspondence during an election period.

Correspondence in relation to significant, sensitive or controversial matters should be signed by the Chief Executive Officer. Replies will be prepared in a manner to protect Council staff from any perceptions of political bias.

Expenses incurred by Council Members

Payment or reimbursement of costs relating to Council Members out-of-pocket expenses incurred during an election period must only apply to necessary costs that have been incurred in the performance of normal Council duties and not for campaigning, ie not for expenses that could be perceived as supporting or being connected with a candidate's election campaign.

In the case of Council Member claims that cover a combination of Council and electoral business, the Chief Executive Officer may approve the partial reimbursement to cover Council activities.

Council branding and stationery

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.

Support staff to Council Members

Support Staff to Council Members must not be asked to undertake any tasks connected directly or indirectly with an election campaign.

Equipment and facilities

Equipment and facilities provided to Council Members for the purpose of conducting normal council business must not be used for campaigning purposes. Where Council Members have Council-funded facilities and/or services (such as mobile phones, computers, etc.) and it is impractical to discontinue their use during an election period, Council Members must not use those facilities/services for any purpose associated with an election campaign.

Public Consultation During an Election Period

Prohibition

It is prohibited under this Policy for discretionary public consultation to be undertaken during the election period (either new consultation or existing) on an issue which is contentious unless prior approval is given by the Council or the Chief Executive Officer.

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

For the avoidance of doubt, this Policy does not prevent any mandatory public consultation required by the Local Government Act or any other Act 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 this Policy.

Approval for public consultation

Given the prohibition outlined above, Council should not commission or approve any public consultation where it is likely that such consultation will continue into an election period, unless Council or the Chief Executive Officer provide prior approval for such consultation to occur in the election period

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 otherwise approved by the Chief Executive Officer or as necessary for the performance of functions as set out at 6.7.1 above.

Community meetings

Community meetings organised by the Council will not be held during an election period.

However, Council Members are at liberty to convene/hold their own community meetings provided that they do not use Council resources to do so (i.e. that room hire and other costs are paid for by the Council Member in the same manner as any other member of the public).

HANDLING CODE OF CONDUCT COMPLAINTS AND COMPLAINTS UNDER THIS POLICY DURING AN ELECTION PERIOD

Any complaint against a Council Member who is also a candidate for re-election which alleges a breach of this Policy will be dealt with in accordance with this clause.

The Chief Executive Officer, upon receiving a complaint against a Council Member who is also a candidate for re-election about conduct specifically in relation to this Policy, will refer the complaint to an independent assessor for assessment and investigation.

If the complaint is, in the opinion of the independent assessor, not so serious as to warrant immediate determination, consideration of the complaint must be deferred until after the election period.

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 Council Member was not an honest or innocent mistake.

If a Council Member against whom a complaint is made is not returned to office after the election, the complaint will lapse.

REVIEW & EVALUATION

The effectiveness of this Policy will be reviewed at least every 3 years in line with Council's Policy Framework.

DEFINITIONS

- caretaker mode*** means the conduct of the Council and its staff during the election period for a general or periodic election (as defined below).
- Chief Executive Officer*** means the appointed Chief Executive Officer or Acting Chief Executive Officer or nominee.
- 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 the City of Port Adelaide Enfield.
- designated decisions*** 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 wilful 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 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);
 - 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;

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 periodic election held under Section 5 of the Local Government (Elections) Act 1999, or an election pursuant to a proclamation or notice under the Local Government Act 1999.

prescribed contract means a contract entered into by the Council for the purpose of undertaking—
road construction or Maintenance; or drainage works.

Returning Officer In South Australia, the Electoral Commissioner is the Returning Officer for all council elections and polls. This includes periodic elections and supplementary elections, which are held when a vacancy occurs for a member in between periodic election

Minister means the Minister for Local Government or other minister of the South Australian government vested with responsibility for the Local Government (Elections) Act.

All references to Council Members should be read as including the Mayor and the Deputy Mayor.

All references to the Chief Executive Officer should be read as including an Acting Chief Executive Officer and his/her nominee.