

# DISTRICT COUNCIL OF LOWER EYRE PENINSULA

## Caretaker Period

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*“Working with our Rural & Coastal Communities”*

	<b>GOV-POL-10 – CARETAKER PERIOD</b>	Version No:	2.0
		Issued:	July 2018
		Next Review:	July 2020

Responsibility:	Governance
Minutes reference:	C1016 (2)
Applicable Legislation:	Local Government Act 1999 Local Government (Elections) Act 1999
Related Policies/Procedures:	Code of Conduct for Council Members Code of Conduct for Council Employees Staff Values
Review Frequency:	Prior to Local Government Elections every four years

## 1. INTRODUCTION

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 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.


This Caretaker Policy will guide the conduct of the District Council of Lower Eyre Peninsula 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;
- 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 Council continues as efficiently and normally as possible; and
- Council resources are not diverted to, or influenced for, electoral purposes.

## 2. APPLICATION OF POLICY

2.1 This policy applies throughout the election period for a general election. For the purposes of the South Australian Local Government election of November 2018, the policy will take effect on 18 September, 2018 and ends at the conclusion of the election, when a result has been declared.

2.2 This policy applies to Council Members and Council staff and is to be taken to form part of the Code of Conduct for Employees and Elected Members.

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### 3. PROHIBITION ON DESIGNATED DECISIONS

3.1 Council is prohibited from making a designated decision during an election period. A decision of Council includes a decision of:

- a committee of Council; and
- a delegate of Council.

3.2 A designated decision means a decision:

(a) relating to the employment or remuneration of the Chief Executive Officer, other than a decisions 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 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; or

(d) 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).

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#### 4. TREATMENT OF OTHER SIGNIFICANT DECISIONS

- 4.1 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.
- 4.2 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; or
  - are scheduled for determination by the incoming Council.
- 4.3 A **major policy decision** includes any decision, not being a designated decision pursuant to s91A(8) of the Local Government (Elections) Act 1999:
- 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 Chief Executive Officer.
- 4.4 The determination as to whether or not any decision is significant will be made by the Chief Executive Officer, after consultation with the Mayor.
- 4.5 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.
- 4.6 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 and 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 and community.
- 4.7 Council will consider the Chief Executive Officer's report and determine whether or not to make the decision.


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## 5. APPLICATION FOR EXEMPTION

- 5.1 If Council considers that it is faced with extraordinary circumstances which require the making of a designated decision during an election period, it may apply in writing to the Minister for an exemption to enable the making of a designated decision that would otherwise be invalid under s91A of the Local Government (Elections) Act 1999 and this policy.
- 5.2 If the Minister grants an exemption to enable the making of a designated decision that would otherwise be invalid under s91A 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.

## 6. EVENTS

- 6.1 The following Council-organised events and ceremonies will have the following variations or restrictions during the election period;
- 6.2 Citizenship ceremonies  
Formal citizenship ceremonies will take place during the election period under the delegation of the Chief Executive Officer, pursuant with the Australian Citizenship Act 2007 and s99(1)(j) of the Local Government Act 1999.
- 6.3 Opening ceremonies
- Ceremonies set up for the opening of a facility owned or managed by Council will be deferred until the conclusion of the election period.
  - Official duties for the opening of community facilities or projects, particularly projects for which Council have provided donations towards, will be undertaken by the Chief Executive Officer.
- 6.4 Major Events  
No major events will be scheduled to take place within the election period unless the event is a state or region wide activity. When an event is a state or region wide activity, any official duties will be undertaken by the Chief executive Officer.
- 6.5 Community Functions  
The Mayor will continue to accept invitations to attend community functions, as will Council Members, particularly when those functions are in recognition of activities of community groups that a Council Member would normally attend outside of the Caretaker Period, whether the community group gained the support of the Council through grants or not.
- 6.6 Council Members are not permitted to campaign while in attendance at events if attending as a Council Member as this would provide an advantage over other persons that have nominated for Council but are not currently sitting members.

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## 7. MEDIA

- 7.1 Media Releases will be limited to operational issues during the election period. Council will not make comment on individual election campaigns except if inaccurate comments are made by a candidate. In these circumstances, the Chief Executive Officer reserves the right to correct the inaccuracy.
- 7.2 During the election period, no media advice or support will be provided to Council Members who have nominated as candidates, or anyone acting on behalf of the candidate.
- 7.3 During the election period, Council will not respond to publicity or media inquiries involving individual candidates or election issues, unless the publicity pertains to comments specified in Clause 7.1 above.
- 7.4 Council's social media accounts will be used to promote the upcoming election process and it will:
- encourage people to vote, including links to candidate information on the Local Government Association of South Australia website;
  - avoid publishing photos of current Council Members at any event; and,
  - not promote or link to any Council Member or candidate's social media accounts.
- 7.5 The public's ability to post comments on Council's social media accounts will be disabled for the duration of the election period.
- 7.6 The Mayor and the Chief Executive Officer will continue to be the spokespersons for Council in relation to routine operational issues.

## 8. PUBLICATIONS

- 8.1 Pursuant to s12(b) of the Local Government (Elections) Act 1999, Council must not publish or distribute, or cause, permit or authorise others to publish or distribute on behalf of Council;
- any advertisement, handbill, pamphlet or notice that contains electoral material during the election period; or
  - any broadcast material that contains electoral material during the election period; or
  - any digital material, including on Council's social media accounts, that contains electoral material during the election period.
- 8.2 Electoral material means any material which is calculated, either intended or likely, to affect voting in an election.
- 8.3 The Annual Report is not bound by this policy to ensure Council complies with regulatory requirements of the Local Government Act 1999 and subordinate legislation.

R18/13235 Policy - GOV-POL-10 - Caretakers Period.DOCX	<i>Electronic version on the Intranet is the controlled version.  Printed copies are considered uncontrolled.  Before using a printed copy, verify that it is the current version.</i>	Page 5 of 9 This copy printed on: 14/09/2018
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## 9. CONTACT WITH STAFF


- 9.1 The Chief Executive is committed to ensuring Council Members are provided with appropriate support to continue to fulfill their official duties and responsibilities during an election period.
- 9.2 During the election period, Council Members will direct all queries, requests for access to information through the Executive Management Team.

## 10. COUNCIL RESOURCES

- 10.1 Council resources shall not be used in connection with any electioneering activity during the election period.
- 10.2 Any assistance provided to candidates as part of the conduct of the general election will be provided equally to all candidates, with the types of assistance available to be documented and communicated to all candidates in advance of the election period.
- 10.3 Any advice provided by staff to a Current Member or a Council Nominee during the Caretaker Period regarding the Council elections will be recorded and equally provided to all persons nominating for Council to ensure the information remains consistent throughout the Caretaker Period.
- 10.4 The reimbursement of Council Members' out-of-pocket and travel expenses during the election period will only be applicable to costs incurred in the undertaking of normal Council business, and not for expenses that could be perceived as supporting, or being connected with, a candidate's election campaign.
- 10.5 The use of District Council of Lower Eyre Peninsula logos, letterheads, business cards and other corporate branding by candidates, or others acting on behalf of candidates, for electioneering activity, is prohibited.
- 10.6 The use of images taken by Council staff, including those appearing on the Council website and social media platforms, by candidates, or others acting on behalf of candidates, for electioneering activity is prohibited.

## 11. CONTINUING THE FUNCTIONS OF THE COUNCIL DURING THE CARETAKER PERIOD

- 11.1 Other than the restrictions stipulated, nothing in this policy prevents the Mayor, Council Members and staff carrying on the business of the Council during the caretaker period.

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## 12. CONSEQUENCE OF CONTRAVENING THIS POLICY

- 12.1 A designated decision made by Council during an election period is invalid, except where an exemption has been granted by the Minister.
- 12.2 Any person who suffers any loss or damage as a result of acting in good faith on a designated decision made in contravention of s91A(e) the Local Government (Elections) Act 1999 or this policy is entitled to compensation from Council for that loss or damage.

## 13. DEFINITIONS

In this policy:

**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 District Council of Lower Eyre Peninsula.

**Council resources** means any asset or service owned or administrated by the District Council of Lower Eyre Peninsula, including property, staff, equipment, vehicles, internet and telecommunications, stationery and hospitality services, used in the course of carrying out normal Council business.

**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 (Once a public notice declaring the Election Results has been issued by the Electoral Commission of South Australia.


**General election** means a general election of council members held:

- (a) under section 5 of the Local Government (Elections) Act; 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.

**Executive Management Team** means the Chief Executive Officer, Manager Corporate Services, Director Works & Infrastructure and Manager Development & Environmental Services.



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#### 14. RELATED POLICIES

- 14.1 This policy forms part of, and is to be read in conjunction with, the Code of Conduct for Elected Members and the Code of Conduct for Employees in accordance with s91A(7) of the Local Government (Elections) Act 1999.
- 14.2 This Policy should also be read in conjunction with the following:
- Local Government Association of South Australia Caretaker Guidelines; and
  - Council Members Allowances and Benefits Policy (GOV-POL-04)

#### 15. AVAILABILITY OF POLICY

- 15.1 This policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website at [www.loweryerepeninsula.sa.gov.au](http://www.loweryerepeninsula.sa.gov.au) and will also be provided to interested members of the public on request, and upon payment of a fee in accordance with Council's schedule of fees and charges.

SIGNED:

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A/CEO

Date: 20 / 07 / 2018

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Mayor, DCLEP

Date: 20 / 07 / 2018