



Light
Regional
Council

Caretaker Policy

Reference Number:
Responsible Department:
Related Policy/Procedure:

Section 6 No. 10
Governance
2.2 Elected Members Code of Conduct
2.3 Committee Members Code of Conduct
2.4 Code of Conduct for Employees

Date of Adoption:
Current Review Date:
Minute Reference:
Version Number:
Applicable Legislation:

15 June 2010
27 May 2022
OCM-2022/080
Amendment No. 5
Local Government Act 1999
Local Government (Elections) Act 1999
Local Government (Elections) Regulations
2010

Next Review Date:
Review Frequency:

November 2025
4 yearly (prior to Council elections)

1. Introduction

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

2. Definitions In this Policy:

Chief Executive Officer means the appointed Chief Executive Officer or Acting Chief Executive Officer or 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 the **Light Regional Council**.

Election period means the period:

- (a) **commencing** on the second Tuesday of September, being a day chosen by the Council for the purposes of the Policy, being a date earlier than the close of nominations for the general election; and
- (b) **terminating** 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 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 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 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).

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.

3. Application of Policy

This Policy applies to:

- each periodic election of members of the Council under the Local Government (Elections) Act 1999; 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.

The Policy applies to the Council, inclusive of the Mayor and a person acting in that role; and Council staff, inclusive of the Chief Executive Officer and a person acting in that role or his or her delegate.

This Policy should be read in conjunction with the Codes of Conduct for Council Members and Council Employees gazetted for the purposes of the Local Government Act 1999, or established by policy direction of the Council in accordance with the Act.

4. Designated Decisions, Prohibition

During a Local Government 'election period', Council will assume a 'Caretaker mode', and will avoid actions and decisions which could be perceived as intended to affect the results of an election or otherwise to have a significant impact on or unnecessarily bind the incoming Council.

The purpose of this Policy is to clearly set the parameters that Council will operate within during a Caretaker period. Caretaker provisions are required pursuant to section 91A of the Local Government (Elections) Act 1999 and are generally regarded as necessary for the promotion of transparent and accountable government during an 'election period'.

The Council is prohibited from making a designated decision during an election period in accordance with section 91A of the Local Government (Elections) Act 1999 unless exempted otherwise. A decision of the Council includes a decision of a Council Committee and a delegate of Council.

5. Designated Decisions, Application for Exemption

If Council considers that it is faced with extraordinary circumstances which require the making of a designated decision during an election period, the 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 and this policy.

If the Minister grants an exemption to enable the making of a designated decision that would otherwise be invalid under the above Act and this policy, then the Council and Council staff will comply with any conditions or limitations that the Minister imposes on the exemption.

6. Other Significant Decisions

- 6.1 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 such decisions are considered by Council prior to the election period; or are 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 funds; 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.
- 6.4 The determination as to whether or not any decision is significant will be made by the Chief Executive Officer, after consultation with the Mayor.
- 6.5 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 the Council.
- 6.6 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.

- 6.7 The Chief Executive Officer's report to Council 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 financial and other 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 options for 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.
- 6.8 Council will consider the Chief Executive Officer's report and determine whether or not to make the decision.

7. Consequence of Contravening this Policy

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

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

8. Continuing the Functions of the Council during the Caretaker Period

Nothing in this policy prevents the Mayor, Council Members and staff carrying on the business of the Council during the Caretaker Period. The Mayor and Council Members will continue to accept invitations to attend community functions, particularly when those functions are in recognition of activities of community groups whether having gained the support of the Council through grants or not.

The Chief Executive Officer will ensure as far as is practical that Council initiatives will not be launched during the Caretaker Period.

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

Council may develop procedural documents or guidelines to manage the business of Council during the Caretaker Period.

9. Council Endorsement

This Policy was initially adopted by Council resolution on 15 June 2010.

10. Review and Evaluation

This Policy is scheduled for review by Council at least once every four (4) years in the local government election cycle as legislated under the Local Government (Elections) Act 1999.

Alternatively the policy can be reviewed where changes to the Local Government Act 1999 and to the Local Government (Elections) Act 1999 are amended to such a degree that the policy will be affected by the amended legislation.

11. Availability of Policy

This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website www.light.sa.gov.au.

Copies will also be provided to interested members of the community upon request, and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.

History

- Adopted by resolution at the ordinary meeting of Council held Tuesday, 15 June 2010 at Item 10.2.1 Page 2010/109.
- Amendment 1 adopted at the ordinary meeting of Council held Tuesday, 24 June 2014 at Item 10.2.10, page 2014/219
- Amendment 2 adopted at the ordinary meeting of Council held on Tuesday, 23 August 2016 at Item GAP10.2.2/2016 Page 2016/322.
- Amendment 3 adopted at the ordinary meeting of Council held Tuesday, 28 August 2018 at Item AUD9.2.5/2018 Page 2018/299.
- Amendment 4 adopted at the Ordinary Council meeting held 26 October 2021, Minute Reference GAP11.2/2021, Page Reference 2021/221.
- Amendment 5 adopted at the Ordinary Council meeting held 24 May 2022, Minute Reference OCM-2022/080.