



DISTRICT COUNCIL OF LOXTON WAIKERIE

Caretaker Policy

Policy identification:	
Policy type:	Council
Summary:	The policy governs the conduct of the Council and its staff during the election period for a general election.
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Authorised by:	Council
Responsible department:	Department Corporate and Community Services
Responsible officer:	Director Corporate and Community Services
Review officer	Governance Officer
Consultation required:	
Relevant references:	
Delegations:	
Legislation	Local Government (Elections) Act 1999
Related policies	Caretaker Guidelines
Related procedures	

1. Background to the Caretaker Policy

The *Local Government (Elections) Act 1999* (the Act) requires each Council to prepare and adopt a caretaker policy to govern the conduct of the Council and its staff during the election period for a general election. Section 91A of the Act stipulates that the caretaker policy must at a minimum prohibit the making of certain designated decisions by the Council during an election period.

2. Policy statement

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

3. 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 Loxton Waikerie.

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

election period means the period:

- (a) commencing on 18 September 2018 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) expiring at the conclusion of the general election.

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*

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

4. Principles

This policy has been developed to meet Council's core values. Our core values are the principles, attributes and qualities we hold as important that we will display in the way we go about our business.

Core Values

We are
GENUINE

Adhering to moral and ethical principles, being honest, accountable, trustworthy and authentic.

We are
CARING

Showing respect, compassion and empathy and being supportive of each other and our community.

We are
UNITED

Working as a team in an inclusive, co-ordinated and collaborative manner to achieve our common goals.

We will
LISTEN

Communicating as well as engaging the community in an open, honest and constructive manner at all times.

We will be
INNOVATIVE

Seeking out and making use of new ideas and opportunities, showing initiative and being progressive, proactive and creative.

We will aim for
EXCELLENCE

Consistently delivering quality service outcomes and endeavouring to be a high performance organisation.



5. Application of policy

- 5.1 This policy applies throughout the election period for a general election. For the purposes of the Local Government Elections of November 2018, **the policy commences on 18 September 2018 and ends at the conclusion of the election**, when results have been declared.
- 5.2 This policy applies to:
 - 5.2.1 the Council; and
 - 5.2.2 Council staff.
- 5.3 This policy is to be taken to form part of the Code of Conduct for Council Employees gazetted for the purpose of section 110 of the Local Government Act.

6. Prohibition on designated decisions

- 6.1 The Council is prohibited from making a designated decision during an election period.
- 6.2 A decision of the Council includes a decision of:
 - 6.2.1 a committee of Council; and
 - 6.2.2 a delegate of Council.

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 the Council in contravention of this policy is entitled to compensation from the Council for that loss or damage.
- 7.3 A breach of this policy is a breach of the Code of Conduct for Council Members

8. Application for exemption

- 8.1 If the 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.
- 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 and this policy, then the Council and Council staff will comply with any conditions or limitations that the Minister imposes on the exemption.

9. Availability of policy

This policy will be available for inspection at the Council Offices at Loxton or Waikerie during ordinary business hours at no charge.

Copies of this Policy will also be available from Councils website: www.loxtonwaikerie.sa.gov.au or postal copies may be obtained from the Council Office free of charge.

10. Document history and version control

Date	Version	Authorisation - Council/ Committee/ Senior Management Team	Amendment Details
16/04/2010	1.0	Council at the meeting of 16 April 2010	First version – in accordance with the requirements of the <i>Local Government (Elections) Act 1999</i> (as amended in 2009)
15/08/2014	1.1	Council at the meeting of 15 August 2014	Amendment to reflect the commencement date of the caretaker period, ie close of nominations
15/06/2018	1.2	Council at the meeting of 15 June 2018	<p>The <i>Model Caretaker Policy</i> has been prepared by the Local Government Association of SA (LGA) in conjunction with Wallmans Lawyers for the guidance of and use by member Councils. The LGA is the statutory peak body for Local Government in South Australia, representing all 68 Councils in the State.</p> <p>This model policy was reviewed and updated in March 2018.</p> <p>Minor change proposed to note the commencement of the caretaker period, ie the close of nominations and to reflect changes to the Code of Conduct for Council Employees and the addition of council core values.</p>



Caretaker Guidelines

2018

The *Caretaker Guidelines* has been prepared by the Local Government Association of SA (LGA) in conjunction with Wallmans Lawyers for the guidance of and use by member Councils. The LGA is the statutory peak body for Local Government in South Australia, representing all 68 Councils in the State.

These Guidelines were reviewed and updated March 2018.

Enquiries regarding this publication should be directed to the LGA on 08 8224 2000.

Introduction

The *Local Government (Elections) Act 1999* (SA) was amended in 2009 to require each Council to prepare and adopt a caretaker policy to govern the conduct of the Council and its staff during the election period for a general election. Section 91A of the Elections Act stipulates that the caretaker policy must at a minimum prohibit the making of certain designated decisions by the Council during an election period.

The Local Government Association of SA (LGA) has prepared a model caretaker policy on the basis of meeting the minimum legislative obligations under section 91A of the Elections Act.

These guidelines are a supplement to the model caretaker policy and provide an overview of the scope and meaning of the legislative requirements under section 91A of the Local Government (Elections) Act. Terms which are defined in the model caretaker policy have the same meanings in these guidelines.

These guidelines also examine the difference between decisions by a Council during an election period allowing the use of Council resources for the advantage of a candidate or particular candidate in a general election and the use by a person of Council resources for personal benefit.

1. Section 91A, Local Government (Elections) Act

1.1. Overview

Under the Local Government (Elections) Act, a Council's caretaker policy must at a minimum prohibit the Council from making designated decisions during an election period.

There are three elements to this prohibition:

- (a) a decision of the Council;
- (b) during an election period
- (c) which is a designated decision.

Each of these elements is described below.

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

Any person who suffers loss or damage as a result of acting on a designated decision made in contravention of section 91A of the Local Government (Elections) Act is entitled to compensation from the Council for that loss or damage.

1.2. Decision of the Council

Section 91A of the Local Government (Elections) Act only applies to a decision of the Council. This will include decisions made directly by the Council or indirectly through a Council committee or delegate.

A personal decision of a Council Member, or a Council employee who is not acting under a delegation, is not a decision of a Council and, consequently, cannot be a designated decision for the purposes of section 91A of the Local Government (Elections) Act.

1.3. Election Period

During an election period Councils are prohibited from making designated decisions, unless an exemption has been granted by the Minister.

Section 91A of the Local Government (Elections) Act prohibits the making of designated decisions during an election period. An election period:

- (a) commences on either:
 - (i) the day on which nominations for a general election close; or
 - (ii) if a Council's caretaker policy specifies an earlier date, that date;and
- (b) expires at the conclusion of the general election.

A decision which is made prior to the election period, but announced during the election period, will not be a designated decision for the purposes of section 91A of the Local Government (Elections) Act.

1.4. Designated Decisions

Only specific types of decision will be designated decisions under section 91A of the Local Government (Elections) Act. The designated decisions are outlined below.

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 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.
(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).

2. Decisions relating to the employment of the Chief Executive Officer

Scope of Designated Decision

Certain Council decisions regarding the Chief Executive Officer made during an election period will be designated decisions.

Any decision relating to the employment or remuneration of the Chief Executive Officer, other than a decision to:

- (a) appoint an acting Chief Executive Officer; or
- (b) suspend a Chief Executive Officer for serious and willful misconduct,

will be a designated decision.

3. Specific contracting decisions

3.1. Scope of Designated Decision

Certain Council decisions regarding specific types of contracts made during an election period will be designated decisions.

Generally, 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. However, there are exclusions from this general position provided in section 91A of the Local Government (Elections) Act and the Local Government (Elections) Regulations 2010 (SA).

3.2. 'Prescribed Contracts'

Prescribed contracts are expressly excluded from the types of contracts which are able to be the subject of a designed decision. A 'prescribed contract' is defined in section 91A of the Local Government (Elections) Act to mean a contract entered into by a Council for the purpose of undertaking road construction, road maintenance or drainage works.

3.3. Exemptions

Other types of contracts are excluded from being the subject of a designated decision by the Local Government (Elections) Regulations. These types of decision are decisions:

- (a) relating to the carrying out of works in response to an emergency or disaster within the meaning of the Emergency Management Act or under section 298 of the Local Government Act;
- (b) for 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;
- (c) relating to the employment of a particular Council employee (other than the Chief Executive Officer);
- (d) 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

- (e) relating to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the Council.

4. Decisions concerning the use of Council resources

4.1. Scope of Designated Decision

A decision of Council 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) made during an election period is a designated decision.

Designated decisions do not include individual decisions of Council Members or Council staff to utilise Council resources for personal benefit. For example, the use of Council resources by a Council Member for the purposes of his or her election campaign is not a designated decision for the purposes of section 91A of the Local Government (Elections) Act.

There are constraints on the personal use of Council resources under the Local Government Act and the gazetted code of conduct applying to council members. These provisions are discussed in Part 7 of these guidelines.

4.2. Council Resources

'Council resources' is a broad concept which is undefined in the Local Government (Elections) Act. A general definition of the term 'resources' provided in the *Macquarie Dictionary* is '*the collective wealth and assets of a country, organisation, individual*'. Applying this definition, any asset or information owned or controlled by a Council is a 'Council resource'.

Council resources may include:

- (a) materials published by Council;
- (b) facilities and goods owned by the Council;
- (c) attendance and participation at functions and events;
- (d) access to Council information; and
- (e) media services.

Council staff and contractors engaged by a Council are also Council resources.

4.3. Meaning of 'Advantage'

The concept of 'advantage' is broad and is defined in the *Macquarie Dictionary* as '*any state, circumstance, opportunity, or means especially favourable to success, interest, or any desired end*'. In the context of section 91A of the Local Government (Elections) Act, the relevant advantage is in respect of being elected or re-elected.

An advantage will be conferred where a decision allowing the use of Council resources favours one candidate over another. An advantage arises when a

candidate utilises resources, information or support that is not available to a candidate in an election who is not an existing Council Member.

The Ombudsman has given 'advantage' a broad interpretation. The Ombudsman's view is that any activity that gives a perception of favouring one candidate over another is an advantage. Whether the scope of the 'advantage' under section 91A of the Local Government (Elections) Act extends to a perceived advantage is likely to be a matter for debate. Councils should, however, be aware of this view when making decisions during an election period.

4.4. Normal Council Business or Campaigning?

There is no relevant advantage where Council resources are used exclusively for normal Council business during an 'election period' and are not used in connection with a candidate's election campaign.

Where Council Members are standing for re-election, the Council should consider whether a decision to use Council resources made during the election period will provide an advantage to existing Council Members (or other particular candidates) in their election campaigns. Where there will be an advantage then the decision is a designated decision and is prohibited by section 91A of the Local Government (Elections) Act.

Where a decision to use Council resources for the ordinary business of the Council is made during the election period then, provided that no particular candidate or candidates in are favoured in their campaigning, this will not be a designated decision.

Reasonable minds are likely to differ over whether the use of particular Council resources will advantage particular candidates. Due propriety and appropriate judgment should be exercised in making decisions to use Council resources during election periods to ensure that the Council and its Members are not open to criticism.

5. Use of Council resources for personal benefit

The use of Council resources for personal benefit is distinct from a designated decision of a Council regarding the use of Council resources for the advantage of a particular candidate or group of candidates.

The use of Council resources for personal benefit is regulated by legislation other than section 91A of the Local Government (Elections) Act. The use of Council resources by a Council Member for the purposes of an election campaign will be a use of those resources for personal benefit. Council Members standing for re-election to Council must take care that they only use Council resources for normal Council business and not to assist them in campaigning.

The general duties on Council Members under section 62 of the LG Act include offences for improper use of information or position to gain personal advantage for the Council Member or another person. A maximum penalty of \$10,000 or imprisonment for two years applies to these offences.

Section 78 of the Local Government Act provides for the use of Council resource by Council Members. Section 78(3) of the Local Government Act states:

A member of a council must not use a facility or service provided by the council under this section for a purpose unrelated to the performance or discharge of official functions or duties (unless the use has been approved by the council and the member has agreed to reimburse the council for any additional costs or expenses associated with this use).

The Code of Conduct for Council Members also prohibit the use of Council resources for private purposes without authorisation.

The use of Council resources for personal benefit in breach of these requirements could be corruption or misconduct for the purpose of the *Independent Commissioner Against Corruption Act 2012* (SA) and be the subject of a complaint to the office of Public Integrity (OPI).

Conduct of a public officer that results in a substantial mismanagement of public resources may also be the subject of a complaint to the OPI.

Disciplinary consequences or prosecutions may ultimately result from the unauthorised use of Council resources for private purposes.

6. Specific Council resource scenarios

The business of a Council does not cease during an election period. Council resources will continue to be used during the election period. There is a distinction between the use of Council resources in the ordinary course of Council operations and the use of Council resources by a candidate or group of candidates for campaigning purposes. Where resources are used for campaign purposes, this will be the use of Council resources for personal benefit.

During an election period, Council Members and Council staff must take care that Council resources are not used for the purpose of election campaigning. Some specific scenarios are discussed below where this issue may arise.

6.1. Council publications during an 'election period'

A decision by a Council to publish information for the advantage of a particular candidate or group of candidates (other than a decision which allows for the equal use of Council resources by all candidates for election) is a designated decision and is prohibited by section 91A of the Local Government (Elections) Act. Publishing includes publication by any medium, including but not limited to leaflets, newspapers, posters, email, websites, radio or television.

Councils have a statutory responsibility to publish certain information regarding general elections. 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.

All election materials published by a Council should fall within the types of material described in section 12(b) of the Local Government (Elections) Act and not contain any material which would advantage a particular candidate or candidates.

'Electoral material' is defined in the Local Government (Elections) Act as '*an advertisement, notice, statement or representation calculated to affect the result of an election or poll*'. Given that the purpose of electoral material is to persuade voters towards a particular candidate or group of candidates, it will not be appropriate for a Council to publish electoral material.

Councils may publish other material during an election period. If Council is considering making a decision during the election period to publish material, the Council should consider whether or not the material would confer an advantage on a particular candidate or group of candidates for election. If an advantage would be conferred then the decision would be a designated decision.

Where a Council publication made in the ordinary course of Council operations would be published during an election period (and this is not the subject of a Council decision made during the election period), the publication will not contravene section 91A of the Local Government (Elections) Act. Care should be taken, however, as to the contents of these publications to ensure that the Council and Council Members are not criticised for publishing information which may assist Council Members to be re-elected.

Council Members are able to publish electoral material on their own behalf (provided that they comply with sections 27 and 28 of the Local Government (Elections) Act)). Council Members should not assert or imply that the electoral material originates from or is endorsed by the Council. A Council Member also should not use Council resources to create or distribute his or her electoral material, including through the use of Council stationary, computers, printers, photocopiers or staff or the application of the Council's logos.

6.2. Attendance at Events and Functions

Events and functions can take many forms including conferences, workshops, forums, launches, promotional activities, and social occasions (such as dinners, receptions and balls).

Council Members can continue to attend events and functions during an election period provided that their attendance is consistent with the ordinary course of the Council Member's duties and is not used for campaigning.

Council Members should consider whether or not their attendance at an event or function is likely to be viewed as campaigning. In part, this may depend on the conduct of the Council Member while in attendance at the event or function. Care should particularly be taken by Council Members if they are asked to give a speech at an event or function during an election period.

6.3. Access to Council Information

Section 61 of the Local Government Act provides Council Members with a right to access Council documents in connection with the performance or discharge of the functions or duties of the member. This right of access continues during an election period.

Council Members should take care that access to Council documents is in connection with the performance or discharge of their functions or duties of the member. Access to Council documents for the purpose of campaigning or to gain an advantage in an election is an improper use of information gained by virtue of the Council Member's position as a member of Council.

Council Members can be prosecuted for the improper use of Council information to gain an advantage for themselves or another person. Maximum penalties of \$10,000 or two years imprisonment apply.

6.4. Media Services

Council's media services should be used to promote Council activities or initiatives or community activities or initiatives which are endorsed or otherwise supported by Council.

Media services should, during the election period, be used in the ordinary course of Council operations. Care should be taken that media services will not be used to advantage a particular Council Member in his or her re-election campaign by profiling that member or activities which are closely associated with that member.

Council Members should not use their position as an elected representative or their access to Council staff and other Council resources to gain media attention in support of an election campaign. To do so, would contravene section 62(4) of the Local Government Act which prohibits a Council Member improperly using his or her position as a Council member to gain, directly or indirectly, an advantage for himself or herself or for another person. Council Members can be prosecuted for this offence. Maximum penalties of \$10,000 or two years imprisonment apply.

6.5. Public Consultation During an Election Period

Public consultation must be undertaken during an election period if the consultation is mandated by legislation.

Where consultation is discretionary then the consultation can occur during the election period. Consideration should be given prior to the consultation being scheduled as to whether or not the consultation will influence the outcome of the election. If the matter subject to the consultation is likely to be closely associated in the minds of voters with a particular candidate or group of candidates then it may be prudent to delay the consultation until after the election period.

6.6. Expenses Incurred by Council Members

Payment or reimbursement of costs relating to Council Members' out-of-pocket expenses incurred during an election period will only apply to necessary costs that have been incurred in the performance of normal Council duties. This is consistent with general requirements applying to the reimbursement of Council Members under section 77 of the Local Government Act.

No reimbursements should be provided for campaign expenses or for expenses that could be perceived as supporting or being connected with a candidate's election campaign.

6.7. Council Branding and Stationery

Councils should not endorse particular candidates for election. Council logos, letterheads, or other Council branding or Council resources or facilities should not be used for a candidate's election campaign.

6.8. Support Staff to Council Members

Council staff who provide support to Council Members should not be asked to undertake any tasks connected directly or indirectly with an election campaign for a Council Member, except where similar support is provided to all candidates.

6.9. Equipment and Facilities

Council resources such as Council computers, stationary and business cards can continue to be used by Council Members during an election period for normal Council business. Council resources should not be used for campaign purposes as this will contravene the Local Government Act and the Code of Conduct for Council Members (see discussion in Part 7).

7. Council staff activities during an election period

Council staff should not undertake any activity that may influence the outcome of an election, except where the activity relates to the election process and is authorised by the Chief Executive Officer.

Council staff should 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. This includes making Council resources available to Council Members for campaign purposes.

Council staff must not assist a Council Member with the Member's election campaign.

Where the use of Council resources could be construed as being related to a candidate's election campaign, the incident must be reported to the Chief Executive Officer.

All Council staff must also comply with the mandatory reporting directions and guidelines issued by the Independent Commissioner Against Corruption if these apply.

A breach of this policy is a breach of the Code of Conduct for Council Employees.

8. Equity of assistance to candidates

8.1. Candidate Assistance and Advice

Councils should not favour a candidate or group of candidates for election, over other candidates.

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

8.2. Election Process Enquiries

All election process enquiries from candidates, whether current Council Members or not, are to be directed to the Electoral Commissioner as the returning officer or, where the matter is outside of the responsibilities of the returning officer, to the Chief Executive Officer or his or her nominee.