



Caretaker Policy

Reference Number:	2.14
Type:	Council
Category:	Corporate Governance
Relevant Community Plan Outcome:	<ul style="list-style-type: none"> Be bold and innovative in our practices, leadership and decision making. Practise transparent and accountable governance.
Responsible Officer(s):	General Manager Corporate Services
First Issued/Approved:	March 2010
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Applicable Legislation:	Local Government (Elections) Act 1999
Related Policies:	Council Member Code of Conduct Policy Staff Code of Conduct Policy Civic Events & Civic Awards Policy Discretionary Ward Allowance Policy Media and Communications Policy Public Consultation Policy
Related Procedures:	Code of Practice for Meeting Procedures

1. Purpose

Section 91A of the *Local Government (Elections) Act 1999* requires Council to prepare and adopt a Caretaker Policy governing the conduct of the council and its staff during the election period for a general election.

2. Scope

This policy applies to the Council Members, Chief Executive Officer and Council Staff of the City of Charles Sturt.

3. Policy Statement

The Caretaker Policy affirms Council's commitment to fair and democratic elections, and adherence to the 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. In addition, during an 'election period', Council will avoid actions and decisions which could be perceived as intended to affect the results of an election.

4. Policy Application

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.

In this Policy:

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

5. Policy Outline

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

- (a) designated decisions as defined in the *Local Government (Elections) Act 1999* that are made by Council; and
- (b) use of Council resources, including:
 - materials published by Council;
 - attendance and participation at functions and events;
 - access to Council information;
 - media services; and
 - responsibilities of Council staff;
- (c) other significant decisions that are made by the Council.

This Policy applies to both the elected Council (Council Members) and to staff and captures all 'designated decisions' of Council, a committee of Council, or a delegate of the Council as detailed in Clause 8.1.

This Policy forms part of (and is to be read in conjunction with) the Council's Council Member Code of Conduct Policy and the Staff Code of Conduct Policy in accordance with section 91A(7) of the *Local Government (Elections) Act 1999*.

6. Policy Period

During an 'election period', Council must assume a '*Caretaker mode* ', which means that it:

- must avoid designated decisions which are prohibited by section 91A of the *Local Government (Elections) Act 1999* (refer clause 8.1);

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.

8. Significant Decisions

8.1 '*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) or to suspend the Chief Executive Officer for serious or wilful 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 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, which are:</p> <ol style="list-style-type: none"> (i) to the carrying out of works in response to an emergency or disaster within the meaning of the <i>Emergency Management Act 2004</i> (SA), or under section 298 of the <i>Local Government Act 1999</i> (SA); (ii) 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;

	<p>(iii) relates to the employment of a particular Council employee (other than the Chief Executive Officer);</p> <p>(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</p> <p>(v) relates to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the Council; or</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.

Council notes that 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 notes 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 an invalid designated decision.

Council, if faced with extraordinary circumstances, may apply in writing to the Minister for an exemption. Council further notes that if the Minister chooses to grant an exemption it may be subject to any conditions or limitations that the Minister considers appropriate.

8.2 Scheduling consideration of designated decisions

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

8.3 Decisions made prior to an 'election period'

This Policy applies to actual decisions made during an 'election period', not the announcement of decisions made prior to the 'election period'.

8.4 Other significant decisions which are prohibited by operation of this Policy

Prohibited Decision	Notes
Any major policy or other decisions which will significantly affect the Council area or community or will inappropriately bind the incoming Council	This is an internal requirement of Council

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, 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.

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

- to endorse or modify a policy or strategic management plan that would have an impact on a significant cohort of the community or strategic direction of the Council;
- to dispose of Council land:

8.5 Access to Discretionary Ward Allowance Policy

No applications shall be reviewed by the Chief Executive or his delegate or be considered by the Council from 1 July of an election year until after the declaration of the General Election.

8.6 Public Consultation during an 'election period'

Public consultation may be undertaken during an election period if the consultation is mandated by legislation (i.e. Parts 1 and 2 of Council's Public Consultation Policy).

Where consultation is discretionary (i.e. Part 3 of Council's Public Consultation Policy) then the consultation may occur during the election period. Consideration should be given prior to the consultation being scheduled as to whether or not the consultation may have an impact or influence on the outcome of a part of the election (eg a Ward). If the matter subject to the consultation is likely to be contentious and likely to become an election topic, then it may be prudent to delay the consultation until after the election period. Approval for discretionary public consultation must be obtained in line with the requirements of the Public Consultation Policy and consideration must be given to the requirements of this Caretaker Policy.

9. Use of Council Resources

Council notes that Section 91A(8)(d) of the *Local Government (Elections) Act 1999* requires Council to prohibit the use of Council resources for the advantage of a particular candidate or group of candidates. This includes a candidate or candidates who are currently Council Members of the Council.

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

- materials published by Council and may include images of an elected member / candidate;
- facilities and goods owned by the Council;
- attendance and participation at functions and events;
- access to Council information; and
- media services.

Council Members and staff will ensure that due propriety is observed in the use of Council resources and must exercise appropriate judgement in this regard.

If a council resource is publicly available (eg a hall for hire) a candidate is not precluded from hiring the facility but the resource must be available on equal terms to any other candidate/community member.

Council resources, including officers, support staff, hospitality services, equipment and stationery must be used exclusively for normal Council business during an 'election period' and, must not be used in connection with an election by Council Members.

9.1 Council Publications During an 'Election Period'

9.1.1 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, handbill, pamphlet or notice that contains 'electoral material' during an 'election period'.

For the purposes of this Policy 'electoral material' means material which is calculated (i.e. intended or likely) to affect the result of 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.

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 1999* or otherwise. Council may provide information, education and publicity designed to promote public participation in the electoral processes for its area, and to inform potential voters about the candidates who are standing for election in its area. It will not publish material that refers to, or comments on, an issue submitted to or is otherwise before voters in connection with the election. It should not preclude the conduct of ordinary business of the Council.

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 (eg by the use of Council logos).

NOTE: 'Publication' means any type of publication, including but not limited to leaflets, newspapers, posters, email, website, radio etc.

9.1.2 Council website

During an 'election period', new material which is prohibited 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 or Electoral Commission publication of candidate profiles and electoral statements for the purposes of section 19A of the *Local Government (Elections) Act 1999*.

9.1.3 Other Council publications

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

Council publications produced in the period leading or during an 'election period' should be reviewed to avoid election containing material. If they appropriately avoid electoral material and are part of the normal business of Council, they may be published.

9.2 Attendance at Events and Functions During an 'Election Period'

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

9.2.1 Events staged by external bodies

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

9.2.2 Council events and functions

Council will avoid hosting Civic Events during the Election Period other than those routinely scheduled and as per the Civic Award Policy or where not holding the event would cause operational difficulty. In the instance where an event is held, behaviour of Council Members and Candidates should in accordance with the requirements of this Policy. If a Civic Event is held during an Election Period, all Candidates should be invited.

9.2.3 Addresses by Council Members

Council Members must 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'.

9.2.4 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 will be consistent with Clause 9 of this policy.

9.3 Access to Council Information

Council Members continue during an 'election period' to have a statutory right to access Council information relevant to the performance of their functions as a Council Member. Council Members should exercise this right with caution and limit it to matters that the Council is dealing with within the objectives and intent of this Policy. Any Council information so accessed that is not publicly available must not be used for election purposes.

All candidates (including those that are Council Members) 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 an election campaign, and there shall be transparency in the provision of all information and advice during an 'election period'.

9.3.1 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, where appropriate, provided to any candidate seeking the same information. Queries by staff regarding the provision of information will be directed to the Chief Executive Officer in the first instance.

9.4 Media Service

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

9.4.1 Media advice

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.

9.4.2 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 or delegate will generally be the appropriate person during an Election Period.

9.4.3 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.

9.4.4 Council Members

Council Members will 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.

9.4.5 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.

9.5 Equity in Assistance to Candidates

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

9.5.1 Candidate assistance and advice

Any assistance and advice provided to candidates as part of the conduct of the Council elections will be provided equally to all candidates.

9.5.2 Election process enquiries

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

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

9.5.4 Council branding and stationery

No Council logos, letterheads, business cards or other Council branding or Council resources or facilities may be used for, or linked in any way with, a candidate's election campaign.

9.5.5 Support staff to Council Members

Council staff who provide support to Council Members must not be asked to undertake any tasks connected directly or indirectly with an election campaign for a Council Member.

9.5.6 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.

10. Handling Code of Conduct Complaints During an Election Period

Any complaint against a Council Member who is also a candidate for re-election made under the Council's Code of Conduct for Council Members during an 'election period' will not be heard or determined by the Council during that period.

Where a complaint is made against a Council Member for a breach of this Policy which is deferred until after the 'election period', the Chief Executive Officer will remind the Council Member of the content of this Policy and will provide them with a copy of it.

Council recognises that the Electoral Commissioner has the role of investigating any alleged breach of the *Local Government (Election) Act 1999*, including alleged illegal practices.