

Election Caretaker Policy

Policy Reference Number	5011656
Responsible Department	Corporate Services
Related Policies	Procurement
Related Procedures	Nil
Date of Adoption	19 January 2010
Revised	15 August 2023

1. Purpose

This Policy sets out the parameters that Council will operate by during a Local Government Election Caretaker period. Caretaker provisions are required pursuant to Section 91A of the Elections Act (Local Government (Elections) Act 1999) and are generally regarded as necessary for the promotion of transparent and accountable government during an election period.

2. Introduction

During a Local Government election period, Council will assume a 'Caretaker mode', avoiding actions and decisions which could, or could be perceived as intended to influence voters or otherwise to have a significant impact on the incoming Council.

3. Power to Make the Policy

This Policy meets the statutory requirements under Section 91A of the Local Government (Elections) Act 1999.

4. Strategic Plan Link

This Policy has the following link to Council's Strategic Plan 2024:

- Leading our People (Goal 5)

5. Principles

- Council is committed to the conduct of open, fair and honest Local Government elections within its area.
- Elected Members are committed to demonstrating fair, transparent and responsible behaviours during an election period.
- Council Employees will treat Elected Members and election candidates equally during the election period.

6. Definitions

During an election period, Council will assume a 'Caretaker mode', which means that it will not :

- make designated decisions as defined in Section 91A of the Elections Act; and
- allow the use of Council resources for the advantage of a particular candidate or group of candidates.

Further, Council will otherwise strive to avoid taking other actions and making other decisions which could be perceived to influence or having the potential to influence voters or to have a significant impact on the Council.

An **election period** means the period:

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

All references in this Policy to the **Chief Executive Officer** mean the appointed Chief Executive Officer of the Council or Acting Chief Executive Officer or the Chief Executive Officer's nominee.

This Policy applies to Elected Members, Employees, and delegates of the Council including a Committee of Council but not the Council Assessment Panel.

Prohibited Decision means either a designated decision prohibited by legislation or a non designated decision agreed by Council to be prohibited during the election caretaker period.

7. Policy

7.1 Application

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

- (a) decisions that are made by Council;
- (b) materials published by Council;
- (c) attendance and participation in functions and events;
- (d) use of Council resources
- (e) access to Council information; and
- (f) media services issues.

7.2 Scheduling

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

So far as is reasonably practicable, the Chief Executive Officer should avoid scheduling other major policy decisions for consideration during an election period and, instead, ensure that such decisions are either:

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

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

The following outlines those decisions which are expressly prohibited by Section 91A of the Elections Act.

A designated decision means:

- A decision to enter into a contract, arrangement or understanding (other than a prescribed contract) with a total value exceeding either \$100,000 or 1% of Council's rates revenue (based on the preceding financial year figures), whichever is the greater
- A decision relating to the employment or remuneration of the Chief Executive Officer, (other than a decision to appoint an acting Chief Executive Officer)
- A decision to terminate the appointment of the Chief Executive Officer

Other than a decision of a kind excluded from this definition by regulation, **'prescribed contract'** is defined to mean a contract for the purpose of undertaking road construction or road maintenance or drainage works.

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

The Elections Act 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.

7.4 The Local Government (Elections) Regulations 2010, provides at Regulation 12, that:

- A decision to enter into a contract, arrangement or understanding the total value of which exceeds whichever is the greater of \$100,000 or 1% of the Council's rate revenue in the preceding financial year is excluded from the definition of designated decision, **if** the decision:
 - Relates to the carrying out of works in response to an emergency or disaster within the meaning of the Emergency Management Act 2004, or under Section 298 of the Local Government Act 1999; or

- 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; or
- Relates to the employment of a particular Council employee (other than the chief executive officer); or
- 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
- Relates to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the Council;
- A decision relating to the employment or remuneration of the Chief Executive Officer of the Council is excluded from the definition of designated decision **if** the decision:
 - Is for the suspension of the Chief Executive Officer for serious and wilful misconduct.

7.5 Chief Executive Officer approval of significant decision

Where the Chief Executive Officer has determined that a decision is significant, and circumstances arise that require the decision to be made during the election period, the Chief Executive Officer will consult with the Independent Members of the Audit & Governance Advisory Committee prior to making a decision, granting approval or preparing a report to Council for its consideration.

The Chief Executive Officer will consider (and report to Council where appropriate) the following when assessing whether a decision should be deferred for consideration by the incoming Council. Whether:

- the decision is considered significant
- the decision is urgent
- there are financial or other consequences associated with postponing the decision until after the election
- a decision on the matter could significantly limit the options of an incoming Council
- the matter requires expenditure of unbudgeted funds
- the matter is the completion of an activity already commenced and previously endorsed by Council
- there are relevant statutory obligations or timeframes; and
- dealing with the matter in the election period is in the best interests of the Council and community.

Where relevant, the Council will consider the Chief Executive Officer's report and determine whether or not to make the decision.

7.6 Decisions made prior to an election period

This Policy only applies to actual decisions made during an election period, not the announcement of decisions made prior to the election period. Whilst announcements of earlier decisions may be made during an election period, as far as practicable any such announcements should be made before the election period begins.

7.7 Council publications during the election period

7.7.1. Council website

During an election period, Employees will publish content consistent with material that has been published during the preceding 3 years of the Council term along with information which is relevant to the election process.

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

7.7.2 Annual Report

If the Annual Report needs to be published during the election period the content will be consistent with information published during the previous 3 years of the Council term in the Annual Report. No Mayor's Message is to be included in the Report if it is adopted by Council during the Election Caretaker period.

7.7.3. Other Council publications

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

7.8 Public consultation during the election period

7.8.1. Prohibition

Discretionary public consultation will only be undertaken during an election period where approval has been given by the Council prior to the commencement of the election period for the consultation to occur during that time.

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

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 has concluded, except where necessary for Council to fulfil its legislative functions.

7.9 Equity in Assistance to Candidates

All candidates for the Council election will be treated equally.

7.9.1. 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.

For clarity, neither the Local Government (Elections) Act 1999 nor this Policy prohibits Council from providing resources to all members of the public, which incidentally includes all candidates for election.

The following Council resources must not be used for the advantage of a particular candidate or group of candidates and may only be used by Elected Members, where necessary, in the performance of their ordinary duties as an Elected Member:

- Council-provided landline phones, computers (including iPads) and other office equipment beyond that provided to members of the public (eg in a public library)
- Council-provided corporate polo tops and business cards
- Requests to Council employees to perform tasks which would confer an advantage on a candidate or group of candidates
- The ability to issue invitations to Council events
- Council travel arrangements (eg access to Council-negotiated rates for flights, accommodation or hire cars)
- Access to areas that members of the public cannot access, including areas within the property of third parties (eg Mayor's Office and Meeting Rooms).
- Council-produced promotional brochures and documents.

The Chief Executive Officer (or nominee) may determine those Council resources that may be used by all candidates for election on an equal basis.

7.9.2. Election process enquiries

All election process enquiries from candidates, whether current Elected 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 Council Liaison Officer for the election.

8. Application of the 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*; and
- So far as can be made applicable and subject to consistency with the *Local Government Act 1999*, any general election of members of the Council under Section 56 of the *Local Government Act 1999*.

This Policy does not apply to supplementary elections.

9. Review & Evaluation

Within six months of each new Council term Council will review this policy. Following this initial review this policy will be reviewed annually by Employees with minor administrative adjustments being approved by the Chief Executive Officer.

10. Availability of the Policy

Copies of this Policy will be available at Council's principal office during ordinary business hours and at Council's website www.campbelltown.sa.gov.au.