

Caretaker Policy

Classification:	<i>Council Policy</i>
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ECM tracking number:	<i>1050631</i>
Responsible Officer:	<i>Chief Executive Officer</i>
Relevant Legislation:	<i>Local Government Act 1999 Local Government (Elections) Act 1999 Emergency Management Act 2004</i>
Related Policies:	<i>Code of Conduct for Council Members Council Member Code of Conduct Complaint Handling Procedure Code of Conduct for Council Employees Media Policy</i>

1. Introduction

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

2. Strategic Plan Desired Outcomes

Principle: 4. Governing with Integrity

Theme: Spans all Strategic Plan Themes

Goals: Spans all Strategic Plan Goals

Priorities: Spans all Strategic Plan Priorities

3. Our Approach

3.1 This Policy applies throughout the election period for a general election. Commencing on the day of the close of nominations for the election and ends after the election when results have been declared.

3.2 This Policy applies to the council and council staff during the election period.

4. Legislative Requirements and Corporate Policy Context

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

5. Interpretation

Definitions

- 5.1 **Chief Executive Officer** (CEO) means the appointed Chief Executive Officer or Acting CEO or nominee.
- 5.2 **Council Staff** means any person employed full time, part-time or casually by the Council who receives remuneration.
- 5.3 **Council Member** means an elected member of the City of Burnside and includes the Mayor.
- 5.4 **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 wilful 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 per cent 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 before the election period; or
 - v. relates to a Community Wastewater Management Systems scheme that has, before the election period, been approved by the Council.
- 5.5 **Elections Act** means the *Local Government (Elections) Act 1999*

- 5.6 **Election Period** means the period commencing on the day of the close of nominations for a general election and expiring after the general election.
- 5.7 **General Election** means a general election of council members held:
- 5.7.1 under section 5 of the *Local Government (Elections) Act 1999*; or
- 5.7.2 pursuant to a proclamation or notice under the *Local Government Act 1999*.
- 5.8 **Minister** means the Minister for Local Government or other Minister of the South Australian government vested with responsibility for the Elections Act.

6. Policy Statement

- 6.1 This Policy applies throughout the election period for a general election, commencing on the day of the close of nominations and concluding when the results have been declared.
- 6.2 This Policy applies to both council members and council staff.
- 6.3 The Council 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.
- 6.4 The Council is prohibited from making a designated decision during an election period, and this includes a decision of a committee of Council and a delegate of the Council.

7. Application of Policy

This Policy:

- 7.1 applies throughout the election period for a general election.
- 7.2 does not apply to supplementary elections.
- 7.3 applies to Council Members and staff and captures all designated decisions of Council, a committee of Council, or a delegate of the Council, including the CEO.

8. Outline

This Policy applies during an election period of Council to:

- 8.1 designated decisions; and
- 8.2 the use of Council resources, including:
- 8.2.1 materials published by Council;
- 8.2.2 attendance and participation at functions and events;
- 8.2.3 access to Council information;
- 8.2.4 media services;

- 8.2.5 responsibilities of Council staff; and
- 8.2.6 other significant decisions made by the Council (as set out in Clause 10 of this Policy).

9. Prohibition on designated decisions

- 9.1 The Council is prohibited from making a designated decision during an election period.
- 9.2 A decision of the Council includes a decision of:
 - 9.2.1 a committee of Council; and
 - 9.2.2 a delegate of Council.

10. Other Significant decisions

- 10.1 So far as is reasonably practicable, the CEO should avoid scheduling significant decisions (including major policy decisions) for consideration during an election period and ensure that such decisions:
 - 10.1.1 are considered by Council before the election period; or
 - 10.1.2 are scheduled for determination by the incoming Council.
- 10.2 A significant decision is any major policy or other decision that will significantly affect the Council area or community or bind the incoming Council.
- 10.3 A 'major policy' decision includes any decision (not being a designated decision):
 - 10.3.1 to spend unbudgeted monies;
 - 10.3.2 to conduct unplanned public consultation;
 - 10.3.3 to endorse a new policy;
 - 10.3.4 to dispose of Council land;
 - 10.3.5 to approve community grants;
 - 10.3.6 to progress any matter which has been identified as an election issue; or
 - 10.3.7 any other issue that is considered a major policy decision by the CEO.
- 10.4 The CEO will determine whether any policy decision is major or any other decision is significant after consultation with the Mayor (as relevant).
- 10.5 The CEO must record all such determinations (including by previous CEOs) and make this list available to candidates upon request.
- 10.6 Where the CEO has determined that a decision is significant, but circumstances arise that require the decision to be made during the election period, the CEO will report this to the Council.

- 10.7 The CEO's report aims to assist Council Members in assessing whether the decision should be deferred for consideration by the incoming Council.
- 10.8 The CEO's report to Council will address the following issues, where relevant:
- 10.8.1 why the matter is considered 'significant';
 - 10.8.2 why the matter is considered urgent;
 - 10.8.3 what are the financial and other consequences of postponing the matter until after the election, both on the current Council and the incoming Council;
 - 10.8.4 whether deciding the matter will significantly limit the options of the incoming Council;
 - 10.8.5 whether the matter requires the expenditure of unbudgeted funds;
 - 10.8.6 whether the matter is the completion of an activity already commenced and previously endorsed by Council;
 - 10.8.7 whether the matter requires community engagement;
 - 10.8.8 any relevant statutory obligations or timeframes; and
 - 10.8.9 whether dealing with the matter in the election period is in the best interests of the Council and the community.
- 10.9 Council will consider the CEO's report and determine whether to make the decision.

11. Prohibition on the Use of Council Resources

- 11.1 Council resources must not be used to advantage a particular candidate or group of candidates.
- 11.2 For clarity, neither the Elections Act nor this Caretaker Policy prohibits the Council from providing resources to all members of the public, which includes all candidates for election.
- 11.3 The following council resources must not be used to advantage a particular candidate or group of candidates. They may only be used by council members, where necessary, in the performance of their ordinary duties as a council member:
- 11.3.1 Mobile phones (if supplied).
 - 11.3.2 Council provided computers and office equipment beyond that provided to members of the public (e.g. in a public library).
 - 11.3.3 Council provided business cards and stationery.
 - 11.3.4 Requests to council employees to perform tasks that would confer an advantage on a candidate or group of candidates.
 - 11.3.5 The ability to issue invitations to council events.

- 11.3.6 Access to areas that members of the public cannot access.
- 11.3.7 Council produced promotional brochures, documents and materials published by Council;
- 11.3.8 Attendance and participation at functions and events;
- 11.3.9 Access to Council information;
- 11.3.10 Community noticeboards; and
- 11.3.11 Media assistance.

12. Other Council Activities and Publications

12.1 Publication of Electoral Material

Council will not publish any electoral material during an election period other than that relating to the election process by way of information, education or publicity, or materials produced by or on behalf of the returning officer to conduct an election.

12.2 Council Website

During an election period, information about Council Members will be restricted to names, contact details, titles, membership of committees and other bodies to which the Council has appointed them.

12.3 Other Council Publications

12.3.1 Any Council publications required to be published during an election period, the content relating to Council Members will be restricted to that required by the *Local Government Act 1999* and Regulations.

12.3.2 Council publications produced before an election period containing material that might be construed as electoral material will not be circulated or displayed during the election period. However, they may be made available to members of the public on request.

12.4 Attendance at Events and Functions¹

12.4.1 Events Organised by External Bodies

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

12.4.2 Council Events and Functions

¹ 12.4.1 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.

12.4.2.1 Council organised events and functions held during the election period will be reduced to only those essential to the operation of the Council.

12.4.2.2 In preparing any material concerning a Council organised or sponsored function or event which will be published or distributed during the election period needs to be consistent with Clause 12.1 of this Policy.

12.5 Addresses by Council Members

12.5.1 Council Members must not give speeches or keynote addresses at Council organised or sponsored events and functions during an election period.

12.5.2 Council Members may make short welcome speeches at Council organised or sponsored events and functions during an election period, if requested, but must not say or do anything that might be construed as promoting themselves for election (electioneering).

12.6 Information and Briefing Material

12.6.1 Information and briefing material prepared or provided by staff for a Council Member during the election period must be necessary to carry out the Council Member's role and, where appropriate, provided to any candidate seeking the same information by publishing the information on the Council's website.

12.6.2 All requests for information by Council Members will be directed to the CEO in the first instance.

12.7 Media Releases / Spokespersons

12.7.1 Media releases will not refer to specific Council Members. Where it is necessary to identify a spokesperson about an issue, the CEO will be the appropriate person.

12.8 Publicity Campaigns

12.8.1 During the election period, publicity campaigns, other than to conduct the election following the requirements of the Elections Act, will be avoided wherever possible.

12.8.2 Where a publicity campaign is deemed necessary for a Council activity, it must be approved by the CEO.

12.8.3 Council publicity during an election period will be restricted to communicating normal Council activities and initiatives without any variation in form or size.

12.9 Council Member Correspondence

12.9.1 The CEO will answer all correspondence addressed to Council Members during the election period.

12.10 Candidate assistance and advice

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

candidates. The available assistance types will be documented and communicated to candidates in advance.

12.11 Expenses Incurred by Council Members

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

12.12 Public Consultation during an election period

12.12.1 Prohibition

12.12.1.1 Discretionary public consultation during the election period on an issue that is contentious is prohibited unless Council specifically resolves otherwise before the commencement of the election period.

12.12.1.2 For this provision, discretionary public consultation means consultation that is not legislatively mandated and involves an invitation or invitations to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed Policy.

12.12.1.3 This Policy does not prevent any mandatory public consultation required by *the Local Government Act 1999* or any other legislation, which must be undertaken to enable the Council to fulfil its functions in relation to any matter or decisions that are not prohibited by law or by this Policy.

12.12.2 Approval for Public Consultation

12.12.2.1 Where public consultation is approved to occur during an election period, the consultation results will not be reported to Council until after the election period, except where it is necessary.

12.13 Community meetings

12.13.1 Community meetings, including Ward Forums, will not be held during an election period.

13. Handling Code of Conduct Complaints during an election period

13.1 During an election period, any complaint made under the Code of Conduct for Council Members against a Council Member who is also a candidate for re-election will not be heard or determined by the Council.

13.2 Upon receiving a complaint against a Council Member, who is also a candidate for re-election about conduct specifically in relation to this Policy, the CEO will refer the complaint in accordance with the Council Member Code of Conduct Complaint Handling Procedure.

- 13.3 If the complaint is, in the opinion of the independent assessor under the Council Member Code of Conduct Complaint Handling Procedure, not so serious as to warrant urgent determination, consideration of the complaint must be deferred until after the election period.
- 13.4 If the Council Member against whom the complaint is made is not returned to office after the election, the complaint will lapse.
- 13.5 An example of a serious complaint that would warrant urgent determination is where a complaint of a deliberate and wilful breach of this Policy is made and is supported by sufficient evidence for the independent assessor to be satisfied that the conduct of the Council Member was not an honest or innocent mistake.
- 13.6 Where a complaint made against a Council Member for a breach of this Policy is deferred until after the election period, the CEO will remind the Council Member of the content of this Policy and will provide them with a copy of it.
- 13.7 Council recognises that the Electoral Commissioner has the role of investigating any alleged breach of the Election Act, including alleged illegal practices.

14 Review and Authority

This Policy will be reviewed every four years in line with Council's Policies and Protocols Framework.

15 Availability

- 15.1 The Policy is available to be downloaded, free of charge, from Council's website www.burnside.sa.gov.au
- 15.2 The Policy may be purchased for a fee as set annually by Council.

16. Further Information

For further information about this Policy, please contact:
City of Burnside Civic Centre; 401 Greenhill Road, Tusmore SA 5065
Telephone; 8366 4200; Email; burnside@burnside.sa.gov.au