

Caretaker Policy

Strategic Reference	Provide leadership, good governance, and efficient, effective and responsive Council services
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Responsibility	Office of the Chief Executive
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Applicable Legislation	Local Government Act 1999 Local Government (Elections) Act 1999 Local Government (Elections) Regulations 2010
Related Policies	Code of Conduct for Council Members (Gazetted) Elected Members Allowances and Benefits Policy Elected Members Training and Development Policy Code of Conduct for Employees (Gazetted) Code of Practice – Formal Proceedings for Council and Committee Meetings Civic Awards Policy
Related Procedures / Documents	

1. Objective

- 1.1. This policy applies throughout the election period for a general election. For the purposes of the Local Government Elections of November 2022, the policy commences on 6 September and ends at the conclusion of the election, when results have been declared.
- 1.2. This policy applies to:
 - The council; and
 - Council staff
- 1.3. 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 1999*.

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- 1.4. During the Election Period the Council and Council Administration will assume a '*Caretaker Mode*', avoiding actions and decisions which could be perceived as influencing voters or having a significant impact on the incoming Council.
- 1.5. The areas of Council's operations that will be impacted during the election period by the caretaker provisions are
 - Entering into Major Contracts
 - Chief Executive Officer Review & Remuneration
 - Use of Council Resources
 - Significant Policy Decisions
 - Events and Functions
 - Media
 - Publications
 - Public Consultation
 - Requests for Information
 - Elected Members Training and Development
 - Contact with Staff

2. Scope

The District Council of Yankalilla is committed to enhancing its capability and performance through good governance practices. This Caretaker Policy aims to guide the conduct of the Council and Council Administration during the lead-up to local government elections and provides information regarding decision-making during an election period to ensure that:

- 2.1. The incumbent Council does not inappropriately make decisions that be binding on an incoming Council and limit its freedom;
- 2.2. Incumbent Elected Members do not receive (or perceive to receive) any advantages or disadvantages over other candidates due to their current position on Council;
- 2.3. The day to day business of the Council continues efficiently and as normal as possible; and
- 2.4. Council resources are not diverted to or used for electoral purposes.

3. Definition

- 3.1. For the purpose of this policy:

Chief Executive Officer means the appointed Chief Executive Officer or Acting (Interim) 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 Yankalilla.

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.

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% 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;

General Election means a general election of council members held:

- (a) Under section 5 of the *Local Government (Elections) Act 1999*; 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 Australia Government vested with responsibility for the Local Government (Elections) Act.

4. Policy Statement

- 4.1. This Policy implements the statutory caretaker period requirements under section 91A of the *Local Government (Elections) Act 1999 (SA)* (*"the Act"*).
- 4.2. It is a long established democratic principle that outgoing elected bodies should not use public resources for election campaigning, nor make decisions which may be unreasonable, inappropriate, or unnecessarily bind an incoming Council.

- 4.3. Council affirms its commitment to fair and democratic elections, and adherence to this principle and in doing so, has adopted this policy.

5. Policy

5.1. Prohibition on designated decisions

- 5.1.1. The Council is prohibited from making a designated decision during an election period.
- 5.1.2. A decision of the Council includes a decision of;
- A committee of Council; and
 - A delegate of Council.

5.2. Prohibition on the use of council resources

- 5.2.1. Council resources must not be used for the advantage of a particular candidate or group of candidates.
- 5.2.2. For clarity, neither the *Local Government (Elections) Act 1999* nor this Caretaker Policy prohibits a council providing resources to all members of the public, which incidentally includes all candidates for election. Resources include;
- Printing of publicly accessible documents on receipt of payment of designated fee
 - Publicly accessible Computer Resources (e.g. in a public library)
- 5.2.3. 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 Council members, where necessary, in the performance of their ordinary duties as a Council member:
- Mobile Phones.
 - Council Vehicles.
 - Council-provided landline phones, computers and other office equipment beyond that provided to members of the public (e.g. in a public library).
 - Council-provided 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 produced promotional brochures and documents.

5.3. Significant Decisions

- 5.3.1. 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 that such decisions
- (a) Are considered by Council prior to the election period; or

- (b) Are scheduled for determination by the incoming Council.
- 5.3.2. 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.
- 5.3.3. A major policy decision includes are decision (not being a designated decision):
- To spend unbudgeted monies;
 - To conduct unplanned public consultation;
 - To endorse 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.
- 5.3.4. The determination as to whether or not any decision is significant will be made by the Chief Executive Officer, after consultation with the Mayor. The Chief Executive Officer must keep a record of all such determinations made by Chief Executive Officers (including previous Chief Executive Officers) and make this list available to candidates upon request.
- 5.3.5. Where the Chief Executive Officer has determined that a decision is significant, but circumstances arise that require the decision is to be made during the election period, the Chief Executive Officer will report this to the Council.
- 5.3.6. The aim of the Chief Executive Officer's report is to assist Elected Members to assess whether the decision should be deferred for consideration by the incoming Council.
- 5.3.7. The Chief Executive Officer's report to Council will address the following issues (where relevant):
- Why the matter is considered significant;
 - Why the matter is considered urgent;
 - What are the financial and other consequences of postponing the matter until after the election, both on the current Council and the incoming Council;
 - Whether deciding the matter will significantly limit options for the incoming Council;
 - Whether the matter requires the expenditure of unbudgeted funds;
 - Whether the matter is the completion of an activity already commenced and previously endorsed by Council;
 - Whether the matter requires community engagement;
 - Any relevant statutory obligations or timeframes; and
 - Whether dealing with the matter in the election period is in the best interests of the Council area and community.
- 5.3.8. Council will consider the Chief Executive Officer's report and determine whether or not to make the decision.
- 5.3.9. Elected Members should carefully consider any Motion or Question raised without notice at a Council Meeting to ensure it is not a significant issue. Advice

should be sought from the Chief Executive Officer prior to the meeting. The Chief Executive Officer is also able to provide advice at the meeting.

5.4. Events

- 5.4.1. The following Council organised events and ceremonies will have the following variations and/or restrictions during the election period;

Citizenship Ceremonies

Formal Citizenship Ceremonies will not take place during the election period, rather private Citizenship Ceremonies will take place under delegation of the Chief Executive Officer.

Community Awards and Recognition

Those awards and recognition ceremonies outlined with the Community Awards and Recognition Policy will be deferred until the conclusion of the election period.

Opening Ceremonies

Ceremonies set up for the opening of a Council owned/managed facility (i.e. neighbourhood house) will be deferred until the conclusion of the election period.

- 5.4.2. No civic or new Council events will be scheduled to take place within the election period unless the event is a state-wide activity.
- 5.4.3. Where an event is state wide activity, the official duties and formalities will be undertaken by the Chief Executive Officer.

5.5. Media

- 5.5.1. Media Releases will be limited to operational issues rather than policy and/or major projects.
- 5.5.2. Council will not make comment on individual election campaigns except is harmfully inaccurate comments are made by a candidate. In these circumstances, the Chief Executive Officer reserves their right to correct the inaccuracy.
- 5.5.3. Council staff will not provide Media advice to the Elected Members who have nominated as candidates regarding public comment on the elections. These matters will be referred to the Chief Executive Officer for comment and action whenever possible.

5.6. Publications

- 5.6.1. Subject to the operation of section 12(b) of the Act, the Council must not:
- Print, publish or distribute; or
 - 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 the election period.
- 5.6.2. Electoral material means any material which is calculated (i.e. intended or likely) to affect voting in an election.

- 5.6.3. Elected Members will observe the requirements of the Publications Policies and the following publications restrictions will apply during the election period;

In the Loop

In the Loop will continue to be published during the election period, the Chief Executive Officer will use this publication as an opportunity to promote the upcoming election. No Elected Member columns will be included within 'In the Loop' during the Caretaker Period.

Annual Report

The Annual Report will not be bound by this policy and hence will proceed in its usual manner to ensure compliance with the legislative requirements of the *Local Government Act 1999*.

5.7. Public Consultation

- 5.7.1. No discretionary public consultation will take place during the election period on an issue which is contentious unless prior approval is given by the Chief Executive Officer.
- 5.7.2. For the purpose of this provision, discretionary public consultation means consultation which is not legislatively mandated and is a process which involves an invitation or invitations to individuals, groups, organisations or the community generally to comment on an issue, proposed action or proposed policy.
- 5.7.3. This policy does not prevent any mandatory public consultation required by the *Local Government Act 1999* or any other Act which is required to be undertaken to enable the Council to fulfil its functions in relation to any matter or decisions which are not prohibited by this policy.
- 5.7.4. 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 period, except where otherwise approved by the Chief Executive Officer or is necessary for the performance of functions of Council.

5.8. Request for Information

- 5.8.1. To increase transparency during the election period, an Information Request Register will be maintained by the Executive and Governance Administration Officer. This register will be a public document that records all requests for information made by Elected Members and Candidates, and the response given to those requirements, during the election period.
- 5.8.2. This register will be available online on the Council Website, as determined by the Chief Executive Officer and for viewing at the principal office of Council.

5.9. Elected Members Training and Development

- 5.9.1. The provisions within the Elected Members Training and Development Policy will cease at the close of nominations and recommence once the new Council has been sworn into office. This means that the Council will not fund any training or professional development activities for Elected Members during this period.

5.10. Contact with Staff

- 5.10.1. The Chief Executive Officer is committed to ensuring Elected Members are provided with the appropriate support to continue to fulfil their official duties and responsibilities during the election period.
- 5.10.2. During the election period, Elected Members will direct all queries, requests and access to information through the Chief Executive Officer.
- 5.10.3. Prior to the election period commencing, the Chief Executive Officer will ensure that all staff are advised of the application of this policy and ensure that;
 - (a) Council staff will not undertake any activity that may affect voting in the election;
 - (b) Council staff will not authorise, use or allocate a Council resource for any purpose which may influence voting in the election; and
 - (c) Council staff will not assist Elected Members in a way that is or could create a perception that they are being used for electoral purposes.

6. Consequence of Contravening this policy

- 6.1. A designated decision made by Council during an election period is invalid, except where an exemption has been granted by the Minister.¹
- 6.2. 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 of damage.²

7. Application for exemption

- 7.1. 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 1999* and this policy.³
- 7.2. 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 1999* and this policy, then the Council and Council staff will comply with any conditions or limitations that the Minister imposes on the exemption.⁴

¹ Section 91A(5) *Local Government (Elections) Act 1999*

² Section 91A(6) *Local Government (Elections) Act 1999*

³ Section 91A(3) *Local Government (Elections) Act 1999*

⁴ Section 91A(4) *Local Government (Elections) Act 1999*

8. Further Information

This policy will be available for inspection at the Council office listed below during ordinary business hours and provided to interested parties as per Council's Fees and Charges Register. Copies are available to be downloaded, free of charge, from Council's website: www.yankalilla.sa.gov.au/policies

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Yankalilla 5203

Phone: (08) 8558 0200

Fax: (08) 8558 2022

Email: council@yankalilla.sa.gov.au

Office hours: Monday to Friday, 9.00am to 5.00pm (except public holidays)

9. Grievances

Any grievances in relation to this policy or its application should be forwarded in writing addressed to the Chief Executive Officer of Council.

10. Review Cycle

This document is subject to review prior to any required caretaker period for either a Supplementary or General Election after the conclusion of the 2022 General Election Period.

11. Document History

Date	Version	Council Resolution No.	Description of changes
19 June 2018	V3.0	C18103	Adoption of Policy
17 May 2022	V4.0	C22092	Review of Policy – Updated following the commencement of section 188 of the Statutes Amendment (Local Government Review) Act 2021, which amended section 91A of the Local Government (Elections) Act 1999.