



COUNCIL POLICY

Caretaker Policy

Policy Number:	PO138		
Strategic Plan Objective:	5. Responsible Governance and Leadership		
Policy Owner:	Chief Executive Officer	Record Number:	16/14239[v4]
Responsible Officer:	Governance Officer	Minute Reference:	050/2022 (13/04/2022)
Date Adopted:	13/04/2022	Next Review Date:	May 2026

1. POLICY OBJECTIVES

This policy implements the statutory caretaker period requirements, under Section 91A of the Local Government (Elections) Act 1999 (Act), and governs the conduct of the Yorke Peninsula Council (Council) and Council Employees during an Election Period for a General Election.

2. SCOPE

This policy applies:

- (a) throughout the Election Period for a General Election and, for the purposes of the Local Government Elections of November 2022 (the Election), commences on 6 September 2022 and ends at the conclusion of the Election, when results have been declared;
- (b) to the Council;
- (c) to all Council Members;
- (d) to all Council Employees;
- (e) to contractors and consultants engaged in Council business.

This policy does not apply to supplementary elections.

3. DEFINITIONS

Refer to Attachment 1.

4. POLICY STATEMENT

The following sets out the restrictions that apply during a Local Government Election, Period:

4.1. Prohibition on Designated Decisions

The Council is prohibited from making a Designated Decision during an Election Period.

A decision of the Council includes a decision of:

- (a) a committee of Council;
- (b) a delegate of Council.

4.2. Other Significant Decisions

So far as is reasonably practicable, the Chief Executive Officer (CEO) will avoid scheduling Significant Decisions (including Major Policy Decisions) for consideration during an Election Period.

The determination as to whether or not any decision is significant will be made by the CEO, in consultation with the Mayor.

Where the CEO has determined that a Significant Decision needs to be made during an Election Period, the CEO will report this to the Council. The Council will consider the report and assess whether or not the decision should be deferred for consideration by the incoming Council.

The CEO's report to the Council will address the following issues (where relevant):

- (a) why the matter is considered significant;
- (b) why the matter is considered urgent;
- (c) what are the financial and other consequences of postponing the matter until after the Election Period, both on the current Council and the incoming Council;
- (d) whether deciding the matter will significantly limit options for the incoming Council;
- (e) whether the matter requires the expenditure of unbudgeted funds;
- (f) whether the matter is the completion of an activity already commenced and previously endorsed by Council;
- (g) whether the matter requires community engagement;
- (h) any relevant statutory obligations or timeframes;
- (i) whether dealing with the matter in the Election Period is in the best interests of the Council area and community;

4.3. Prohibition on the use of Council Resources

Council Resources must not be used for the advantage of a particular candidate for election or group of candidates for election and may only be used by Council Members, where necessary, in the performance of their ordinary duties as a Council Member.

Despite this, Council may determine to provide Council Resources to all members of the public, including all candidates for election, on an equal basis.

4.4. Consequence of Contravening this Policy

A Designated Decision made by Council during an Election Period is invalid, except where an exemption has been granted by the relevant Minister.

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.

4.5. Application for Exemption

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 relevant Minister for an exemption to enable the making of a Designated Decision, that would otherwise be invalid under section 91A of the Act and this policy.

If the Minister grants an exemption to enable the making of a Designated Decision, then the Council and Council Employees will comply with any conditions or limitations that the Minister imposes on the exemption.

4.6. Continuing the Functions of the Council During the Election Period

Nothing in this policy prevents the Mayor, Council Members and Council Employees carrying on the business of the Council during the Election Period.

All requests for the Mayor or Council Members to participate in speaking engagements will be referred to the CEO for consideration.

The CEO will ensure as far as practical that Council initiatives will not be launched during the caretaker period.

4.7. Media Spokesperson

The CEO will be the Council's spokesperson to the media or at official functions relating to an election.

4.8. Impartiality

Council Employees will act impartially in relation to all candidates for election.

4.9. Policy Availability

This policy is available, free of charge, on the Council's website www.yorke.sa.gov.au. Copies will also be provided to interested members of the community upon request and upon payment of a fee in accordance with Council's Fees and Charges Register.

5. COMPLAINTS

Complaints about this policy can be made in writing to the Governance Officer. Complaints will be managed in accordance with Council's Complaints Policy PO147.

6. REVIEW

This policy will be reviewed every four years and as deemed necessary in consideration of any changes to legislation and relevant standards, codes, guidelines and audit findings.

7. TRAINING

The CEO will ensure as far as possible, that all Council Members and Council Employees are informed of the application of this policy 30 days prior to the commencement of the Election Period.

Training needs will be reviewed annually, during individual performance reviews and as necessary in consideration of any changes to legislation and relevant standards, codes, guidelines and audit findings.

Council Members and Council Employees will actively participate in training as required.

8. RECORDS

Records will be maintained as required by Council's Records Management Policy PO063 and relevant legislation.

9. RELATED COUNCIL POLICIES/PROCEDURES AND DOCUMENTS

PO014 Code of Conduct for Council Employees Policy
PO037 Internal Review of a Council Decision Policy
PO057 Community Engagement Policy
PO089 Elected Member Allowances and Benefits Policy
PO123 Code of Conduct for Council Members Policy
PO147 Complaints Policy
PO149 Community Grants Scheme Policy
PO171 Public Interest Disclosure Policy
R011 Fees and Charges Register

10. REFERENCES AND LEGISLATION

Local Government (Elections) Act 1999
Local Government Act 1999
Local Government (Elections) Regulations 2010
Local Government Association Model Caretaker Policy
Local Government Association Caretaker Guidelines

11. COUNCIL DELEGATION

Details of Delegation:	Nil
Delegate:	

12. VERSION HISTORY

Version No	Issue Date	Description of Change
1	08/06/2010	New Policy
2	11/06/2014	Minor Revision
3	13/06/2018	Minor Revision
4	13/04/2022	Revisions prior to November 2022 Local Government Election

ATTACHMENT 1: DEFINITIONS

Term/Reference	Definition
Council Member	An Elected Member of the Yorke Peninsula Council.
Council Employee	Any person that is employed full-time, part-time or casually by the Council who receives remuneration for their work.
Council Resources	<p>Includes, but is not limited to, the following Council resources:</p> <ul style="list-style-type: none"> • 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; • Council Employees performing tasks which would confer an advantage on a candidate for election or group of candidates for election; • invitations to Council events; • Council travel arrangements (e.g. access to council-negotiated rates for flights, accommodation or hire cars); • access to/use of areas that members of the public cannot access, including areas within the property of third parties (e.g. a ‘Mayor’s Parlour’ at a town hall); • Council produced promotional brochures and documents; <p>and those set out in Council’s Elected Member Allowances and Benefits Policy (PO089).</p>
Election Period	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	<p>A decision:</p> <ol style="list-style-type: none"> (a) relating to the employment or remuneration of the CEO, other than a decision to appoint an acting CEO or to suspend the CEO for serious and wilful misconduct; (b) to terminate the appointment of the CEO; (c) to enter into a contract, arrangement or understanding (other than a contract for road

	<p>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, or under section 298 of the Local Government Act 1999; (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 CEO); (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 System scheme that has, prior to the Election Period, been approved by the Council; or <p>(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).</p>
<p>General Election</p>	<p>A general election of Council Members held:</p> <ul style="list-style-type: none"> (a) under Section 5 of the Act; or (b) pursuant to a proclamation or notice under the Local Government Act 1999.
<p>Major Policy Decision</p>	<p>Any decision (not being a Designated Decision) including:</p> <ul style="list-style-type: none"> (a) to spend unbudgeted monies; (b) to conduct unplanned public consultation; (c) to endorse a new policy; (d) to dispose of Council land; (e) to approve community grants;

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	(f) to progress any matter which has been identified as an election issue; (g) any other issue that is considered a major policy decision by the CEO.
Significant Decision	Any Major Policy or other decision which will significantly affect the Council area or community or will bind the incoming Council.