



COUNCIL POLICY

Caretaker Policy

| | | | |
|---------------------------------|------------------------------------------------------|--------------------------|-----------------------|
| Policy Number: | PO138 | | |
| Strategic Plan Objective | Meet all legislative and compliance responsibilities | | |
| Policy Owner: | CEO | Record Number: | 114239 [v3] |
| Responsible Officer: | Governance Officer | Minute Reference: | 138/2018 (13/06/2018) |
| Date Adopted: | 13/06/2018 | Next Review Date: | June 2022 |

1. POLICY OBJECTIVES

This policy implements the statutory caretaker period requirements under Section 91A of the Local Government (Elections) Act 1999 (SA).

This policy governs the conduct of the Yorke Peninsula Council (Council) and its staff during an election period for a general election and restricts Council from making certain decisions during this caretaker period.

2. SCOPE

This policy applies:

- (a) Throughout the election period for a general election (for the purposes of the Local Government Elections of November 2018, commences on 18 September 2018 and ends at the conclusion of the election, when results have been declared);
- (b) To all Council Members and Council staff
- (c) To contractors and consultants engaged in council business.

This policy forms part of the Code of Conduct for Council Members and the Code of Conduct for Council Employees gazetted for the purpose of Sections 63 and 110 of the Local Government Act 1999.

This policy does not apply to supplementary elections.

3. DEFINITIONS

Definitions are provided in Attachment 1.

4. POLICY STATEMENT

During a local government election period for a general election, Council will assume a caretaker mode.

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; and
- 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 the election period, the CEO will report this to the Council and the Council Members 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 Council will address the following issues (where relevant):

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

4.3 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 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.

A breach of this policy is a breach of the Code of Conduct for Council Members and Code of Conduct for Council Employees.

4.4 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 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 2010 and this policy.

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 2010 and this policy, then the Council and Council staff will comply with any conditions or limitations that the Minister imposes on the exemption.

4.5 Continuing the Functions of the Council during the Caretaker Period

Nothing in this policy prevents the Mayor, Council Members and staff carrying on the business of the Council during the caretaker period. The Mayor and Council Members will continue to accept invitations to attend community functions, as will Council Members, particularly when those functions are in recognition of activities of community groups whether having gained the support of the Council through grants or not.

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 is practical that Council initiatives will not be launched during the caretaker period.

4.6 Media Spokesperson

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

4.7 Impartiality

Council staff will act impartially in relation to all candidates.

4.8 Policy Availability

This Policy will be available for inspection at Council's principal office during ordinary business hours and 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 schedule of fees and charges.

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 and guidelines.

7. TRAINING

The Chief Executive Officer will ensure as far as possible, that all Council Members and staff are informed of the application of this policy 30 days prior to the commencement of the caretaker 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 and guidelines.

Elected Members and employees will actively participate in training as required.

8. RELATED COUNCIL POLICIES AND DOCUMENTS

PO037 Internal Review of a Council Decision

PO146 Support Disciplinary and Performance Management Policy

PO147 Complaints Policy

9. REFERENCES AND LEGISLATION

- Local Government (Elections) Act 1999
- Local Government Act 1999
- Local Government (Elections) Regulations 2010
- Code of Conduct for Council Employees (PO014)
- Code of Conduct for Council Members (PO123)
- Local Government Association Model Caretaker Policy
- Local Government Association Caretaker Guidelines

10. COUNCIL DELEGATION

| | |
|-------------------------------|-----|
| Details of Delegation: | Nil |
|-------------------------------|-----|

11. VERSION HISTORY

| Archived Policy Name | Policy Number | Date Adopted | Last Reviewed |
|-----------------------------|----------------------|---------------------|----------------------|
| Caretaker Policy | PO138 | 08/06/2010 | 11/06/2014 |
| Caretaker Policy | PO138 | 11/06/2014 | 13/06/2018 |
| Caretaker Policy | PO138 | 13/06/2018 | |

Definitions

ATTACHMENT 1

| | |
|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Council Member | An Elected Member of the Yorke Peninsula Council. |
| Council staff | Any person that is employed full-time, part-time or casually by the Council who receives remuneration for their work. |
| 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> <ul 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 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: <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 (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 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 |

| | |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>period; or</p> <p>(v) relates to a Community Wastewater Management System scheme that has, prior to the election period, been approved by the Council; or</p> <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> |
| General Election | <p>A general election of Council Members held:</p> <p>(a) under Section 5 of the Local Government (Elections) Act; or</p> <p>(b) pursuant to a proclamation or notice under the Local Government Act 1999 (SA).</p> |
| Major Policy | <p>Any decision (not being a designated decision) including:</p> <p>(a) to spend unbudgeted monies;</p> <p>(b) to conduct unplanned public consultation;</p> <p>(c) to endorse a new policy;</p> <p>(d) to dispose of Council land;</p> <p>(e) to approve community grants;</p> <p>(f) to progress any matter which has been identified as an election issue; and</p> <p>(g) any other issue that is considered a major policy decision by the CEO.</p> |
| Significant Decision | <p>Any major policy or other decision which will significantly affect the Council area or community or will bind the incoming Council.</p> |