

COUNCIL POLICY	
Reference Number	690972
Responsible Business Unit	Office of the CEO
Responsible Officer	Chief Executive Officer
Legislation	Local Government Act 1999 Local Government (Elections) Act 1999 Local Government (Elections) Regulations 2010
Relevant Delegations	Chief Executive Officer
Related Policies Management Guidelines Frameworks	Code of Conduct for Elected Members - <a href="#">682841</a> Code of Conduct for Employees - <a href="#">679144</a> Code of Conduct for S41 Independent Members - <a href="#">685233</a> Council Elections Process policy - <a href="#">653812</a>
Link to Strategic Plan	Objective 4.1 - Provide effective and accountable leadership and teamwork throughout the organisation
Council resolution	131.5
Date Adopted	8 August 2022
Review Date	2026
Previous Revisions	Version 2 – 14/5/18, item 95.4 Version 1 – 2/7/14, item 58.3 Version 0 – 9/3/10, item 1095.1.5

## POLICY STATEMENT

It is a long established democratic principle that outgoing elected bodies should not use public resources for election campaigning, nor make decisions which may unreasonably, inappropriately or unnecessarily bind on an incoming Council.

This policy affirms Council's commitment to fair and democratic elections and adherence to this principle. This policy addresses the requirements of S91A of the Local Government (Elections) Act 1999

## OBJECTIVES

1. To ensure that sitting Elected Members, Candidates, Staff and the Community are aware of their responsibilities and the decision making and resource use limitations that exist during the Election Caretaker period.
2. To ensure fairness and transparency is afforded to both sitting Elected Members and intending Candidates during the Caretaker period of local elections.
3. To ensure that Council complies fully with the requirements of the Local Government (Elections) Act 1999.

## SCOPE

This policy applies to all sitting Elected Members, candidates for a periodic Council election, staff, volunteers and contractors of the Rural City of Murray Bridge

This policy also applies to decisions made by a Committee of Council and/or a delegate of Council.

This policy does not apply during a Supplementary Council election.

## PRINCIPLES

Council's Core Values represent the principles of this policy:

- Accountable – effective, equitable, open and honest
- Respectful – respect and support for the diversity of our ideas and culture
- Innovative – strong commitment to continuous improvement in all business processes
- Collaborative – focus on teamwork without our organisation and create external partnerships to achieve our vision
- Inclusive – value and incorporate local knowledge and viewpoints through effective community engagement
- Integrity – being open and honest in all our dealings and maintaining the highest ethical standards at all times.

## IMPLEMENTATION

This policy applies during the Election period, being the period commencing on the day of the close of nominations for a general election and expiring at the conclusion of the general election.

## DEFINITIONS

In this policy:

**Chief Executive Officer** means the appointed Chief Executive Officer or Acting Chief Executive 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 Rural City of Murray Bridge.

**Election Period / Caretaker 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:

- 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.
- To terminate the appointment of the Chief Executive Officer.
- 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:
  - 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)*.
  - 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.
  - 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 Schemes that has, prior to the election period, being approved by the Council; or
- (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)

**General Election** means a general election of Council Members held:

- (a) Under section 5 of the Local Government (Elections) Act; or
- (b) Pursuant to a proclamation or notice under the *Local Government Act 1999 (SA)*

**Minister** means the Minister for Local Government or other Minister of the South Australian government vested with responsibility for the Local Government (Elections) Act, 1999

**Council resources** include – materials published by the Council; facilities and goods owned by the Council (including IT equipment, Council email addresses; phone lines; Council vehicles) attendance and participation of functions and events; access to Council information and media services; Council staff and contractors.

**Advantage** – any activity that gives a *perception* of favouring one candidate over another

## TREATMENT OF OTHER SIGNIFICANT DECISIONS

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
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.
3. A 'major policy' decision includes are decision (not being a designated decision);
  - (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
  - (f) To approve the attendance at Conferences and or training sessions by Elected Members which has a financial cost to Council.
  - (g) To progress any matter which has been identified as an election issue
  - (h) Any other issue that is considered a major policy decision by the Chief Executive Officer.
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 such determinations made and make this list available to candidates upon request.
5. Where the Chief Executive Officer has determined that a decision is significant, but circumstances arise that require the decision to be made during the election period, the Chief Executive Officer will report this to the Council.

6. The aim of the Chief Executive Officer's report is to assist Council Members assess whether the decision should be deferred for consideration by an incoming Council.
7. The aim of the Chief Executive Officer's report is to assist Elected Members assess whether the decision should be deferred for consideration by the incoming Council.
8. The Chief Executive Officer's report to 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, 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 any activity already commenced and previously endorsed by the Council;
  - (g) Whether the matter requires community engagement
  - (h) Any relevant statutory obligations or timelines; and
  - (i) Whether dealing with the matter in the election period is in the best interests of the Council area and Community.
9. Council will consider the Chief Executive Officer's report and determine whether or not to make the decision.

## CONTINUING THE FUNCTIONS OF THE COUNCIL DURING THE CARETAKER PERIOD

1. Nothing in this policy prevents the Mayor, Elected Members and staff carrying on the business of the Council during the caretaker period. The Mayor will continue to accept invitations to attend community functions as will Elected 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.
2. In attending functions representing Council, Elected Members will be mindful of their responsibilities in relation to the Local Government (Elections) Act and this policy and not use their attendance for election campaigning purposes.
3. The CEO will ensure as far as practicable that Council initiatives will not be launched during the caretaker period.
4. The Mayor will continue to be Council's spokesperson in the media or at other official functions.
5. In making statements to the media (verbal or written) the Mayor and Council Members will not use their official capacity to make election campaign speeches.
6. Statements made for election campaigning purposes by individuals are to comply with S 27 and 28 of the Local Government (Elections) Act) and should not assert or imply that the electoral material originates from Council.
7. Council Members will have access to Council's information and resources for day to day Council activities however these resources must not be used for election campaigning purposes.
8. Should a question arise as to what is an 'advantage' to a sitting Elected Member, the CEO will make the final determination.

## USE OF COUNCIL RESOURCES FOR PERSONAL BENEFIT BY AN ELECTED MEMBERS

The use of Council resources for personal benefit is regulated by Legislation. The use of Council resources by an Elected Member for the purposes of an election campaign is considered to be a use of those resources for personal benefit. Elected Members standing for re-election to Council must take care that they only use Council resources for normal Council business and not to assist them in campaigning.

The general duties on Elected Members under S62 of the Local Government include offences for improper use of information or position to gain personal advantage for the Elected Member or another person.

S78 of the Local Government Act provides for the use of Council resource by Council Members and S78(3) states:

*A member of a Council must not use a facility or service provided by this Council under this section for a purpose unrelated to the performance or discharge of official functions or duties (unless the use has been approved by the council and the member has agreed to reimburse the council for any additional costs or expensed associated with this use.*

The Code of Conduct for Council Members, Code of Conduct for Employees and the employment conditions of Employees prohibit the use of Council resources for private purposes without authorisation.

The use of Council resources for personal benefit in breach of these requirements, could be misconduct, or, if more severe, corruption under the *Independent Commissioner Against Corruption Act 2012 (SA)* and be subject of a complaint to the Office of Public Integrity.

Conduct of a public officer that results in a substantial mismanagement of public resources may also be the subject of a complaint to the OPI.

Disciplinary consequences or prosecutions may ultimately result from the unauthorised use of Council resources for private purposes

## CONSEQUENCE OF CONTRAVENING THIS POLICY

1. A designated decision made by Council during an election period is invalid, except where an exemption has been granted by the Minister, (refer S91A(5) of the *Local Government (Elections) Act 1999*)
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 or damage, (refer S91A(6) of the *Local Government (Elections) Act 1999*)

## APPLICATION FOR EXEMPTION

1. If the Council considers 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, (refer S91A(3) of the *Local Government (Elections) Act 1999*)
2. If the Minister grants an exemption to enable the making of the designated decision that would otherwise be invalid under section 91A of the *Local Government (Elections) Act 1999* and this policy, then the Council and the Council staff will comply with any conditions or limitation that

the Minister imposes on the exemption (refer S91A(4) of the *Local Government (Elections) Act 1999*

## ELECTION PROCESS ENQUIRIES

All election process enquiries from candidates, whether sitting Council Members or not, are to be directed to the Electoral Commissioner as the Returning Officer or, where the matter is outside the responsibility of the Electoral Commission, Council's Chief Executive Officer.