

ECM DSID:	
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Responsible Officer:	Manager Strategy and Governance

## 1. PREAMBLE

### 1.1 Purpose

This policy implements the statutory caretaker period requirements under section 91A of the *Local Government (Elections) Act 1999*, ensuring transparent and accountable government during election periods.

### 1.2 Scope

This policy applies throughout the election period for a general election.

This policy does not apply to Supplementary elections.

This policy applies to the council, including council committees, and all council staff, except where otherwise stated.

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* and the Code of Conduct for Council Members gazetted for the purpose of section 63 of the *Local Government Act 1999*.

### 1.3 Definitions

**Chief Executive Officer** means the appointed Chief Executive Officer or Acting 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 City of Holdfast Bay.

**Election Period** is the period from the date nominations open to the date the Certificate of the Election is completed and returned to the council. For the purposes of the Local Government Elections of November 2022, the policy commences on 24 August 2022 and ends at the conclusion of the election, when the results have been declared.

## COUNCIL CARETAKER POLICY

**Designated decision** means a decision prohibited by the *Local Government (Elections) Act 1999*, being 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 works, road maintenance or drainage works) the total value of which exceeds \$390,400 (being 1% of Council's revenue from rates in the 2021-22 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*, 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 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 or
- d. that would allow 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 1999*; or
- b. pursuant to a proclamation or notice under the *Local Government Act 1999*.

**Major policy decision** includes any decision (not being a designated decision):

- a. to spend unbudgeted funds
- 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 progress any matter which has been identified as an election issue
- g. any other issue that is considered a major policy decision by the Chief Executive Officer.

Subject to items a, b and c above within the definition of *Major policy decision* not having any application to decisions pertaining to Alwyndor.

**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*.

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**Significant decision** is any major policy or other decision which will significantly affect the Council area or community or will bind the incoming Council.

## 1.4 Strategic Reference

Statutory compliance.

## 2. PRINCIPLES

2.1 Council, a committee of council, a delegate of the council (including the Chief Executive Officer and sub-delegates of the Chief Executive Officer) are prohibited from making a designated decision during an election period.

2.2 A designated decision made by council during an election period is invalid, except where an exemption has been granted by the Minister.

2.2.1 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* and this policy.

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

2.3 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.

2.4 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 are:

- (a) considered by Council prior to the election period or
- (b) scheduled for determination by the incoming Council.

2.4.1. The determination as to whether a decision is significant will be made by the Chief Executive Officer after consultation with the Mayor. A record of all such determinations must be made and must be made available to candidates on request.

2.4.2 Where a decision is deemed to be significant but circumstances require that the decision be made during an election period, a Report will be prepared for council. The Report will either be for information where the decision has been made by the Chief Executive Officer under delegated power on the basis of genuine emergency or hardship and otherwise will have the objective of assisting the Council to assess whether the decision can be deferred for consideration following the Election Period.

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- 2.4.3 The Report must explain why the matter is significant, and, if already made under delegated power why it was a situation of genuine emergency or hardship and, otherwise, why it is urgent, what the consequences of deferral are, whether a decision will limit options for the council following the Election Period, relevant statutory and operational considerations and an assessment of whether dealing with the matter in the election period is in the best interests of the council area and community.
- 2.5 Council resources must not be used for the advantage of a particular candidate or group of candidates, including candidates who are currently council members.
- 2.5.1 The following council resources must not be used for the advantage of particular 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 information and technology and office equipment beyond that provided to all members of the public
  - Council-provided business cards
  - Requests to council employees to perform tasks which would confer an advantage on a candidate or group of candidates
  - Invitations to council events
  - Council travel arrangements, including corporate rates
  - Access to areas that members of the public cannot access, including areas within third party properties (for example, a council 'corporate box' or 'Mayor's Parlour' at a sporting venue)
  - Council-produced promotional brochures and documents.
- 2.5.2 Council staff must not undertake any activity that may influence the outcome of an election, except where the activity is required for the purposes of a fair election process and is authorised by the Chief Executive Officer. Council staff must not assist a council member with election campaign activities during hours of work.
- 2.6 Nothing in this policy prevents the ordinary business of the council continuing during the election period.
- 2.7 The Mayor will continue to be council's spokesperson in the media in relation to council business or at other official functions.

### 3. REFERENCES

#### 3.1 Legislation

- *Local Government Act 1999*
- *Local Government (Elections) Act 1999*

#### 3.2 Other References

- LGA Caretaker Guidelines December 2021.