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1. PREAMBLE

The purpose of this policy is to implement the statutory caretaker period requirements under section 91A of the *Local Government (Elections) Act 1999*.

During a local government ‘election period’ for a ‘general election’, Council will assume a ‘caretaker mode’ and will avoid actions and decisions which could be perceived as intended to influence voters or otherwise to have a significant impact on or unnecessarily bind the incoming Council.

1.1 Background

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 an incoming Council.

The *Local Government (Elections) Act 1999* was amended in 2009 to require each Council to prepare and adopt a caretaker policy to govern the conduct of the Council and its staff during the election period for a general election. Section 91A, in conjunction with regulation 12 of the *Local Government (Elections) Regulations 2010* stipulates that the caretaker policy must at a minimum prohibit the making of certain designated decisions by the Council during a caretaker period.

During a Local Government ‘election period’, Council will assume a ‘Caretaker mode’, and will avoid actions and decisions which could be perceived as intended to affect the results of an election or otherwise to have a significant impact on or unnecessarily bind the incoming Council.

1.2 Purpose

The purpose of this policy is to clearly outline the parameters that Council will operate within during a Caretaker period. Caretaker provisions are necessary to provide the community with confidence and certainty in relation to Council decision making during the lead-up to a general election of Council. Its purpose is to ensure transparent and accountable government during election periods.

1.3 Scope

This policy applies to all elected members, employees, contractors and volunteers of Council and to all decisions of Council, Council committees and Council delegates.

This policy does not apply to Supplementary elections.

CARETAKER PERIOD POLICY

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*.

1.4 Definitions

The following definitions apply to this policy.

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 – a period of approximately 10 weeks.

Designated decision means a decision prohibited by the *Local Government (Elections) Act 1999*:

- 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 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; 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:

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- 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*.

Major policy decision includes any 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 progress any matter which has been identified as an election issue; and
- g. any other issue that is considered a major policy decision by the Chief Executive Officer.

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

1.5 Strategic Reference

Culture: Supporting excellent, efficient operations

2. PRINCIPLES

- 2.1 This policy applies throughout the election period for a general election. For the purposes of the Local Government Elections, the policy will commence on the date nominations open and ends at the conclusion of the election, when results have been declared.
- 2.2 This policy applies during an 'election period' of Council to cover:
 - a. 'designated decisions' as defined in the *Local Government (Elections) Act 1999* that are made by the Council
 - b. 'other significant decisions' that are made by the Council.
- 2.3 Designated Decisions (section 91A of the *Local Government (Elections) Act 1999*)
 - 2.3.1 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.
 - 2.3.2 A designated decision made by Council during an election period is invalid, except where an exemption has been granted by the Minister.
 - 2.3.3 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

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policy is entitled to compensation from the Council for that loss or damage.

2.3.4 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.

2.3.5 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.

2.4 Other Significant Decisions

2.4.1 So far as is reasonably practicable, the Chief Executive Officer should avoid scheduling major policy decisions for consideration during an 'election period' and, endeavour to ensure that such decisions:

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

2.4.2 A 'significant decision' is any major policy decision or other decision which will significantly affect the Council area community as a whole or will bind the incoming Council.

2.5 Use of Council Resources

2.5.1 Council notes that section 91A(8)(d) of the *Local Government (Elections) Act 1999* prohibits the use of Council resources for the advantage of a particular candidate or group of candidates. This includes a candidate or candidates who are currently elected members of the Council.

2.5.2 Council resources must be used exclusively for normal Council business during an 'election period', and must not be used in connection with an election (including election campaigning) other than uses strictly relating to the election process.

2.6 Continuing the functions of the Council during the caretaker period

2.6.1 Nothing in this policy prevents the Mayor, elected members and staff carrying on the business of the Council during the caretaker period.

2.6.2 The Chief Executive Officer will ensure as far as is practical that Council initiatives will not be launched during the caretaker period where they are deemed to conflict with the provisions of this policy.

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- 2.6.3 The Mayor will continue to be Council's spokesperson in the media 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*