

CARETAKER POLICY

Adopted by Council 24 May 2022

public

TABLE OF CONTENTS

1. PREAMBLE	3
2. PURPOSE	3
3. SCOPE	3
4. DEFINITIONS	3
5. PRINCIPLES	5
6. POLICY STATEMENT	5
6.1 Prohibition on designated decisions	5
6.2 Consequence of contravening this policy	6
6.3 Application for exemption	6
6.4 Treatment of other significant decisions	6
6.5 Continuing the functions of the Council during the caretaker period	8
6.6 Prohibition on the use of council resources	8
7. POLICY REVIEW	10
8. AVAILABILITY OF POLICY	10
9. VERSION HISTORY	11
10. DOCUMENT CONTROL	11

1. PREAMBLE

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 of the Elections Act, 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.

The *Local Government (Elections) Act 1999* was further amended in November 2021 as part of the local government reforms to include a new sub-clause to *prohibit the use of council resources for the advantage of a particular candidate or group of candidates, during the election period.*

2. PURPOSE

This caretaker policy has been prepared on the basis of meeting these minimum legislative obligations and to address issues commonly asked or questioned by Elected Members, employees, the community and the media during the caretaker period.

3. SCOPE

This policy applies throughout the caretaker period for a Local Government general election. For the purposes of the Local Government elections of November 2022, the policy commences at 12 noon on Tuesday, 6 September 2022 and ends at the conclusion of the election, when results have been declared. The Policy does not apply to Local Government supplementary elections.

This policy applies to:

- the Council; and
- Council staff.

This policy is to be taken to form part of the *Code of Conduct for Council Employees* and the *Code of Conduct for Council Members* gazetted for the purpose of section 63 of the *Local Government Act 1999*.

4. DEFINITIONS

In this Policy:

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 Mitcham.

Council resources includes the use of the Council logo, letterhead, business cards and photographs, use of Council photocopiers and other equipment, Council email and the services of Council employees.

designated decision means 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 willful 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*, 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

election period means the period commencing on the day of the close of nominations for the election and expiring at the conclusion of the election. The election period is known as the caretaker period.

electoral material means an advertisement, notice, statement or representation calculated to affect the result of an election or poll.

established event includes any community event planned and organised prior to the caretaker period.

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*.

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*.

5. PRINCIPLES

Outgoing elected bodies should not use public resources for election campaigning, nor make decisions which may unreasonably, inappropriately, or unnecessarily bind an incoming government.

Council resources should not be 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).

6. POLICY STATEMENT

6.1 Prohibition on designated decisions

- 6.1.1 The Council is prohibited from making a designated decision during a caretaker period.
- 6.1.2 A decision of the Council includes a decision of:
 - 6.1.2.1 a committee of Council; and
 - 6.1.2.2 a delegate of Council.

6.2 Consequence of contravening this policy

- 6.2.1. A designated decision made by Council during a caretaker period is invalid, except where an exemption has been granted by the Minister.
- 6.2.2. 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.
- 6.2.3. A breach of this policy is a breach of the Code of Conduct for Council Members.

6.3 Application for exemption

- 6.3.1. If the Council considers that it is faced with extraordinary circumstances which require the making of a designated decision during a caretaker 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.
- 6.3.2. 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 1999* and this policy, then the Council and Council staff will comply with any conditions or limitations that the Minister imposes on the exemption.

6.4 Treatment of other significant decisions

- 6.4.1. So far as is reasonably practicable, the Chief Executive Officer should avoid scheduling significant decisions (including major policy decisions) for consideration during a caretaker period and ensure that such decisions:
 - 6.4.1.1 are considered by Council prior to the caretaker period; or
 - 6.4.1.2 are scheduled for determination by the incoming Council.
- 6.4.2. 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.
- 6.4.3. A 'major policy' decision includes any decision (not being a designated decision):

- to spend unbudgeted monies;
- to conduct unplanned public consultation;
- to endorse a new policy;
- to dispose of Council land;
- to approve community grants;
- to progress any matter which has been identified as an election issue; and
- any other issue that is considered a major policy decision by the Chief Executive Officer.

6.4.4. The determination as to whether or not any decision is significant will be made by the Chief Executive Officer, after consultation with the Mayor (as relevant).

6.4.5. 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.

6.4.6. 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.

6.4.7. The Chief Executive Officer's report to Council will address the following issues (where relevant):

- why the matter is considered 'significant';
- why the matter is considered urgent;
- what are the financial and other consequences of postponing the matter until after the election, both on the current Council and the incoming Council;
- whether deciding the matter will significantly limit options for the incoming Council;
- whether the matter requires the expenditure of unbudgeted funds;
- whether the matter is the completion of an activity already commenced and previously endorsed by Council;
- whether the matter requires community engagement;
- any relevant statutory obligations or timeframes; and

- whether dealing with the matter in the caretaker period is in the best interests of the Council area and community.

6.4.8. Council will consider the Chief Executive Officer's report and determine whether or not to make the decision.

6.4.9. Elected Members should carefully consider any Motion or Question raised without notice at a Council Meeting to ensure it is not a significant issue. Advice should be sought from the Chief Executive Officer prior to the meeting. The Chief Executive Officer is also able to provide advice at the meeting.

6.4.10. Full Council – Gallery Questions during the caretaker period will be suspended.

6.5 Continuing the functions of the Council during the caretaker period

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.

The Chief Executive Officer will ensure as far as is practical that Council initiatives will not be launched during the caretaker period, although recognised established events scheduled at this time will continue to be held.

The Mayor will continue to be Council's spokesperson in the media or at other official functions.

Elected Members have the right to make statements to the media in a private capacity, so long as it is expressed as a personal opinion and not made on behalf of Council.

Full Council Gallery Questions during the Caretaker period will be suspended.

6.6 Prohibition on the use of council resources

6.6.1 Elected Members must take care that they only use Council resources for normal Council business and not for personal use or to

effect other candidates

- 6.6.2 Council resources must not be used for the advantage of a particular candidate or group of candidates
- 6.6.3 For clarity, neither the Local Government (Elections) Act 1999 nor this Caretaker Policy prohibits a council providing resources to all members of the public, which incidentally includes all candidates for election.
- 6.6.4 The following council resources must not be used for the advantage of a particular candidate or group of 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 landline phones, computers and other office equipment beyond that provided to members of the public (eg in a public library)
 - Council-provided business cards
 - The ability to issue invitations to council events
 - Council travel arrangements (eg access to council-negotiated rates for flights, accommodation or hire cars)
 - Access to areas that members of the public cannot access including areas within the property of third parties (eg a 'Mayor's Parlour' at a suburban football oval).
 - Councils produced promotional brochures and documents

6.6.5 Council publications

No election advertising material will be accepted from any candidate for publication in Mitcham Community News, with the final Elected Member articles published on 14 August 2018.

All candidates will be provided with an equal opportunity for their name to appear in the October issue of Mitcham Community News.

6.6.6 Access to Council information

Elected Members have a statutory right to access Council information relevant to the performance of their functions as Elected Members. This information is not to be used for election purposes.

Council information which is on the public record is equally available to all candidates.

6.6.7 Reimbursements

Reimbursement of Elected Member expenses during the caretaker period will only apply to those costs incurred for the performance of ordinary Council duties, and not incurred as part of an election campaign.

7. **POLICY REVIEW**

This Policy is scheduled for review by Council within 6 months *before* the 2026 local government elections (per requirements under the Act).

The CEO has delegated authority to endorse any amendments to the Policy that do not vary the intent of the policy.

8. **AVAILABILITY OF POLICY**

This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website www.mitchamcouncil.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

9. VERSION HISTORY

VERSION	AUTHOR(S) POSITION	CHANGES	DATE
1	Governance		27/4/2010
2	Governance	Based on LGA model policy Change to length of caretaker period Removal of cap of \$100,000	8/7/2014
3	Governance	Based on LGA model policy Change to dates Consequence of contravening this policy added to 6.2.3	1/5/2018
7	Governance Officer	Refer to Full Council Resolution 12 November 2019 Item 9.4	12 November 2019
8 (v2)	Governance Officer	Change Policy Set ID Number	21 November 2019
9	Elected Member Support	Refer to Full Council Resolution 24 May 2022 Item 9.3	

10. DOCUMENT CONTROL

Responsible Department	Performance and Strategy
Delegations Apply	No
Classification	Governance

Applicable legislation	Local Government (Elections) Act 1999 Local Government (Elections) Regulations 2010		
Related Policies & Corporate Documents	Election Signs Policy		
Additional references	LGA Caretaker Guidelines		
Endorsed by Council:	24 May 2022	Item No:	9.3
Effective Date:	24 May 2022	Next Review Date:	May 2026
Policy Set ID:	4131419	Template Set ID:	3345084