

THE BAROSSA COUNCIL CARETAKER POLICY



1. Purpose

- 1.1. This Policy implements the requirements under section 91A of the *Local Government (Elections) Act 1999* (SA) – known as the “caretaker provisions” – which provides The Barossa Council (Council) with a transparent and accountable government in both the Elected Body and Council Workers during the 2022 Local Government election period.

2. Scope

- 2.1 This Policy applies throughout the election period for a general election, which for the purpose of the Local Government Elections of November 2022, commences on 6 September 2022 and ends at the conclusion of the election, when results have been declared.
- 2.2 This Policy applies to the Council and Council Workers.

3. Policy Statement

3.1. Prohibition on designated decision

- 3.1.1. Council is prohibited from making a Designated Decision during an Election Period.
- 3.1.2. A decision of the Council includes a decision of:
- (a) a committee of Council; and
 - (b) a delegate of Council.

3.2. Prohibition on the use of Council resources

- 3.2.1. Council resources must not be used for the advantage of a particular candidate or group of candidates.
- 3.2.2. For clarity, neither the *Local Government (Elections) Act 1999* nor this Caretaker Policy prohibits Council providing services to all members of the public, which incidentally includes all candidates for election.
- 3.2.3. The following council resources must not be used for the advantage of a particular candidate or group of candidates. However, the following resources may only be used by Elected Members, where necessary, in the performance of their ordinary duties as an Elected Member, and must not be used for the purposes of campaigning:
- (a) Mobile phones.



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- (b) Council-provided landline phones, computers and other office equipment, including printing, beyond that provided to members of the public (eg in a public library).
- (c) Council-provided business cards.
- (d) Requests to council employees to perform tasks which would confer an advantage on a candidate or group of candidates and are not within approved service levels or set budgets.
- (e) The ability to issue invitations to council events.
- (f) Council travel arrangements (eg access to council-negotiated rates for flights, accommodation or hire cars).
- (g) Access to areas that members of the public cannot access, including areas within the property of third parties).
- (h) Council produced promotional brochures and documents not including the Mayoral statement in the Annual Report of Council.
- (i) Access to training and development required for the performance of an Elected Member's ordinary duties, in accordance with relevant Council Policies and Processes.
- (j) Council photographs, videos and images, and includes but is not limited to photographs taken of Elected Members by Council during the course of an Elected Member's ordinary duties, Council logos and branding

3.3. Consequence of contravening this Policy

- 3.3.1. A Designated Decision made by Council during an Election Period is invalid, except where an exemption has been granted by the Minister.
- 3.3.2. Any person who suffers loss or damage as a result of acting in good faith on a Designated Decision made by Council in contravention of this Policy is entitled to compensation from Council for that loss or damage.

3.4. Application for exemption

- 3.4.1. If Council considers that it is faced with extraordinary circumstances which require the making of a Designated Decision during an Election Period, it 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.
- 3.4.2. 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 Workers will comply with any conditions or limitations that the Minister imposes on the exemption.

3.5. Treatment of Other significant decisions

- 3.5.1. 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.
- 3.5.2. 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.

3.5.3. A '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 elections issue; and
- (g) any other issue that is considered a major policy decision by the Chief Executive Officer.

3.5.4. The determination as to whether or not any decision is significant will be made by the Chief Executive Officer, after consultation with the Mayor or Chairperson (as relevant to a Committee of Council). The Chief Executive Officer must keep a record of all such determinations by the Chief Executive Officer and make this list available to candidates upon request.

3.5.5. 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.

3.5.6. 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.

3.5.7. 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 an activity already commenced and previously endorsed by Council;
- (g) whether the matter requires community engagement;
- (h) any relevant statutory obligations or timeframes; and
- (i) whether dealing with the matter in the election period is in the best interests of the Council area and community.

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

4. Supporting Processes and Documents

Caretaker Guidelines - Ref: 18/33927*

5. Related Policies

Code of Conduct for Council Members
Code of Conduct for Council Employees
Human Resource Management Policy

6. Legislation and References

Local Government (Elections) Act 1999, section 91A

7. Review

This Policy will be reviewed by the Council in consultation with the relevant stakeholders, within four (4) years or more frequently if legislation or Council's need changes.

8. Further Information

- 8.1. This Policy is available on Council's website at www.barossa.sa.gov.au. It can also be viewed electronically at Council's principal office at 43-51 Tanunda Road, Nuriootpa and all Council branches, during ordinary business hours. A copy of this Policy can be obtained at those venues upon payment of a fixed fee.
- 8.2. Complaints regarding this Policy or its application can be made to the Customer Service team on 8563 8444 or barossa@barossa.sa.gov.au at first instance, who will refer you to the most appropriate officer according to Council's *Customer Service Policy* (see clause 8.1 above for availability).

9. Document Control

Corporate Plan Link:		6.2 Ensure that Council's policy and process frameworks are based on principles of sound governance and meet legislative requirements.			
Document Owner:	Chief Executive Officer			Document Control Officer:	Team Leader, Corporate Governance and Information Services
Consultation Rating:	N/A*	Audience:	External	Next Review Date:	01/06/2026
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Version No.	Date		Description of Change		
4.0	21/06/2022		Policy reviewed prior to 2022 periodic elections		
3.0	19/06/2018		Policy reviewed prior to 2018 periodic elections		
2.0	15/07/2014		Policy reviewed prior to 2014 periodic elections		
1.0	21/09/2010		Policy reviewed prior to 2010 periodic elections		

10.	Definitions
Chief Executive Officer	The appointed Chief Executive Officer or Acting Chief Executive Officer or nominee.
Designated Decision	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 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 <i>Emergency Management Act 2004</i> (SA), or under section 298 of the <i>Local Government Act 1999</i> (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.
Elected Member	Elected Members, including the Mayor, of The Barossa Council.
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 – known also as the “caretaker period”.
General Election	General election of Elected Member held: (a) under section 5 of the <i>Local Government (Elections) Act 1999</i>; or (b) pursuant to a proclamation or notice under the <i>Local Government Act 1999</i> (SA).
Minister	Minister for Local Government or other minister of the South Australian government vested with responsibility for the <i>Local Government (Elections) Act 1999</i> .

Worker	A person is a worker if the person carries out work in any capacity for Council, including work as: (a) an employee; or (b) a contractor or subcontractor; or (c) an employee of a contractor or subcontractor; or (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking; or (e) an outworker; or (f) an apprentice or trainee; or (g) a student gaining work experience; or (h) a volunteer; or (i) a person of a prescribed class.
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