

1. RATIONALE

This Policy implements the statutory caretaker period requirements under section 91A of the *Local Government (Elections) Act 1999 (the Act)* and in particular complies with section 91A(7) of the Act, ensuring that this Policy will form part of the City of Marion Code of Conduct for Council Members.

2. POLICY STATEMENT

It is a long-established democratic principle that outgoing elected bodies would not use public resources for election campaigning, nor make decisions which may be unreasonable, inappropriate, or unnecessarily bind an incoming Council.

Council affirms its commitment to fair and democratic elections, and adherence to this principle and in doing so, has adopted this Policy.

3. OBJECTIVES

The objectives of the Caretaker Policy is to guide the conduct of the City of Marion during the lead up to local government elections and provides information regarding decision- making during an election period to ensure that:

- 3.1 the incumbent Council does not make certain decisions that will be binding on an incoming Council and limit its freedom;
- 3.2 incumbent Council Members do not receive (or are perceived to receive) any advantages or disadvantages over other candidates due to their current position on Council;
- 3.3 the day-to-day business of the Council continues efficiently and as normal as possible; and
- 3.4 Council resources are not diverted for or influenced for electoral purposes.

4. POLICY SCOPE AND IMPLEMENTATION

Scope

This Policy applies throughout the election period for a general election. For the purposes of the Local Government Elections of November 2022, the policy commences on 6 September 2022 and ends at the conclusion of the election, when results have been declared.

The Policy applies to:

- The council; and
- Council staff

Implementation

4.1 Council Designated Decisions Prohibited by Legislation

- 4.1.1 The Council is prohibited from making a designated decision during an election period.

4.1.2 A decision of the Council includes a decision of:

- *a committee of Council; and*
- *a delegate of Council.*

4.2 Other Significant Decisions Prohibited By This Policy

4.2.1 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:

- *are considered by Council prior to the 'election period'; or*
- *are scheduled for determination by the incoming Council.*

4.2.2 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.

4.2.3 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.*

4.2.4 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 all such determinations made by Chief Executive Officers (including by previous Chief Executive Officers) and make this list available to candidates upon request.

4.2.5 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.

4.2.6 The aim of the Chief Executive Officer's report is to assist Council Members assess whether the decision should be deferred for consideration by the incoming Council.

4.2.7 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 election period is in the best interests of the Council area and community.*

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

4.3 Consequence of Making a Designated Decision

- 4.3.1 A designated decision made by Council during an election period is invalid, except where an exemption has been granted by the Minister.
- 4.3.2 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.

4.4 Application for Exemption

- 4.4.1 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.
- 4.4.2 If the Minister grants an exemption to enable the making of a designated decision, then the Council and Council staff will comply with any conditions or limitations that the Minister imposes on the exemption.

4.5 Prohibition on the use of Council Resources

- 4.5.1 Council resources must not be used for the advantage of a particular candidate or group of candidates.
- 4.5.2 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.
- 4.5.3 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 their performance of their ordinary duties as a council member:

- Mobile Phones and landline Phones
- Council Vehicles (noting the Mayors Vehicle usage will comply with the requirements of the Council Member Allowances and Benefit Policy)
- Council-provided computers and other office equipment beyond that provided to members of the public (e.g. in a public library)
- Council-provided business cards
- Council travel arrangements (e.g 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

4.6 Variations and/or Restrictions to Events

4.4.1 The following Council organised events and ceremonies will have the following variations and/or restrictions during the election period;

Citizenship Ceremonies

Formal Citizenship Ceremonies will take place during the election period under the delegation of the Chief Executive Officer.

Community Awards and Recognition

Those awards and recognition ceremonies outlined with the Community Awards and Recognition Policy will be deferred until the conclusion of the election period.

Opening Ceremonies

Ceremonies set up for the opening of a Council owned/managed facility will be deferred until the conclusion of the election period.

4.4.2 No civic/major events will be scheduled to take place within the election period unless the event is a state or metropolitan wide activity.

4.4.3 Where an event is a state/metropolitan wide activity, the official duties and formalities will be undertaken by the Chief Executive Officer.

4.4.4 Invitations to council run events will come from the Chief Executive Officer

4.7 Variations and/or restrictions on Media

4.5.1 Media Releases will be limited to operational issues rather than policy and/or major projects. Council will not make comment on individual election campaigns except if harmfully inaccurate comments are made by a candidate. In these circumstances, the Chief Executive Officer reserves his/her right to correct the inaccuracy.

4.5.2 Council staff (including the Unit Manager Media, Marketing and Events) will not provide media advice to the Council Members who have nominated as candidates regarding publiccomment on the elections. These matters will be

referred to the Chief Executive Officer for comment and action whenever possible.

4.5.3 Council's social media accounts will:

- be used to promote the upcoming Council Elections and encourage people to vote, including links to candidate information on the LGA candidate website;
- not promote or link to any Council Member or candidate's social media accounts;
- not re-tweet or share any Council Member or candidate's social media posts;
- respond to Council Member or candidate's direct enquiries on social media as they would to any other member of the public. All responses will be signed off by the Unit Manager Media, Engagement and Events or the Manager Office of the CEO, and included in the Information Request Register as per part 4 clause 11 of this policy.

4.8 Variations and/or restrictions on Publications

4.6.1 Subject to the operation of Section 12(b) of the Act, the Council must not print, publish or distribute, or cause, permit or authorise others to print, publish or distribute on behalf of Council

4.6.2 any advertisement, handbill, pamphlet or notice that contains 'electoral material' during the election period.

4.6.3 Electoral material means any material which is calculated (i.e. intended or likely) to affect voting in an election.

4.6.4 Council Members will observe the requirements of the Publications Policies and the following publications restrictions will apply during the election period;

4.6.5 If City Limits is scheduled to be published during the election period, the Chief Executive Officer will use this publication as an opportunity to promote the upcoming election.

Council Member columns will not be included in editions published during the caretaker period. The profiles of all Candidates may be included in place of the Council Member columns.

4.6.6 The Annual Report will not be bound by this policy and hence proceed in its usual manner to ensure compliance with the legislative requirements of the Local Government Act 1999.

4.9 Miscellaneous

4.7.1 Information and Customer Request Register

To increase transparency during the election period an Information and Customer Request Register will be maintained by the Unit Manager Governance and Council Support. This Register will be a public document

that records all requests information and customer requests made by Council Members and Candidates, and the response given to those requests, during the election period.

4.7.2 Contact with Staff

4.7.2.1 The Chief Executive Officer is committed to ensuring Council Members are provided with the appropriate support to continue to fulfil their official duties and responsibilities during the election period.

4.7.2.2 During the election period, Council Members will direct all queries, requests and access to information through the, The Office of the CEO.

4.7.2.3 Prior to the election period commencing, the Chief Executive Officer will ensure all staff are advised of the application of this Policy and ensure that;

- Council staff will not undertake any activity that may affect voting in the election;
- Council staff will not authorise, use or allocate a Council resource for any purpose which may influence voting in the election; and
- Council staff will not assist Council Members in a way that is or could create a perception that they are being used for electoral purposes.

4.7.3 Council Member Training and Development

The provisions within the Council Members Professional Development Policy will cease at the close of nominations and recommence once the new Council has been sworn into office meaning that the Council will not fund any training and professional development activities for Council Members during this period.

4.10 Grievances

4.8.1 Council confirms that all candidates for the Council election will be treated equally.

4.8.2 Any complaints or grievances in relation to this Policy should be referred to the Chief Executive Officer.

5. DEFINITIONS

Term	Definition
Chief Executive Officer	means the appointed Chief Executive Officer or Acting Chief Executive Officer or nominee.

<i>Term</i>	<i>Definition</i>
<i>council staff</i>	means any person that is employed full-time, part-time or casually by the Council who receives remuneration for their work.
<i>Council Member</i>	means an Council Member of the City of Marion
<i>designated decision</i>	<p>means a decision:</p> <ul style="list-style-type: none"> (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 (\$779,000), except if the decision: <ul style="list-style-type: none"> (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

<i>Term</i>	<i>Definition</i>
	<p>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</p> <p>(v) relates to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the Council; or</p>
<i>election period</i>	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.
<i>general election</i>	<p>means a general election of council members held:</p> <p>(a) under section 5 of the <i>Local Government (Elections) Act</i>; or</p> <p>(b) pursuant to a proclamation or notice under the <i>Local Government Act 1999</i>.</p>
<i>Minister</i>	means the Minister for Local Government or other minister of the South Australian government vested with responsibility for the Local Government (Elections) Act.

6. ROLES AND RESPONSIBILITIES

<i>Role</i>	<i>Responsibility</i>
<i>Chief Executive Officer</i>	<ul style="list-style-type: none"> will ensure all staff are advised of the application of this Policy
<i>Manager Office of the CEO</i>	<ul style="list-style-type: none"> will ensure and monitor compliance with the policy and be responsible for any grievances arising from non-compliance
<i>Council Members</i>	<ul style="list-style-type: none"> will comply with the policy for the defined period
<i>Staff</i>	<ul style="list-style-type: none"> will comply with the policy for the defined period

7. REFERENCES

This Policy is to be read in connection and complement the following:

City of Marion

- *Code of Conduct for Council Members*
- *Complaints and Grievances Policy*
- *Council Members Expenses, Benefits, Support and Facilities Policy*
- *Council Member Publications Policy*

Other

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

8. REVIEW AND EVALUATION

This Policy is available to download free of charge via the Council's website: www.marion.sa.gov.au. A copy may be provided upon request. The Council will review and update this policy no less than every four years in line with the Council's Policy Framework.