

Elections Caretaker Policy



PART ONE: PRELIMINARY

1. Introduction

The City of Marion is committed to enhancing its capability and performance through good governance practices. This Elections Caretaker Policy aims 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:

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

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 Elected Members and Staff.

2. Policy Statement

It is a long established democratic principle that outgoing elected bodies should 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. 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 Marion**

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* (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).

election period 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.

general election means a general election of council members held:

- (a) under section 5 of the *Local Government (Elections) Act*; 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.

PART 2: COUNCIL DECISIONS PROHIBITED BY LEGISLATION

4. Designated Decisions

- 4.1. The Council is prohibited from making a designated decision during an election period.
- 4.2. A decision of the Council includes a decision of:
 - 4.2.1. a committee of Council; and
 - 4.2.2. a delegate of Council.

5. Consequence of Making a Designated Decision

- 5.1. A designated decision made by Council during an election period is invalid, except where an exemption has been granted by the Minister.
- 5.2. 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. Application for Exemption

- 6.1. 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.
- 6.2. 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.

PART 3: COUNCIL DECISIONS AND OTHER ACTIVITIES PROHIBITED BY POLICY

Whilst not prohibited by legislation, other significant decisions are prohibited by this Policy.

7. Significant Decisions

- 7.1. A 'significant decision' is any new major policy decision, significant changes to policy, major projects that significantly affect the Council, or other significant decision which will bind the incoming Council.
- 7.2. A 'major policy decision' includes any decision (not being a designated decision):
 - 7.2.1. to spend unbudgeted monies, that may influence the financial sustainability of the Council ;
 - 7.2.2. to conduct unplanned public consultation;
 - 7.2.3. to endorse a new Council policy;
 - 7.2.4. to dispose of Council land:
 - 7.2.5. to approve community grants;
 - 7.2.6. to progress any matter which has been identified as an election issue, or is likely to be controversial; and
 - 7.2.7. any other issue that is considered a major policy decision by the Chief Executive Officer.
- 7.3. 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:
 - 7.3.1. are considered by Council prior to the 'election period'; or
 - 7.3.2. are scheduled for determination by the incoming Council.

- 7.4. Where the Chief Executive Officer has considered that a decision is significant and requires a decision to be made during the election period, the Chief Executive Officer will report this to the Council.
- 7.5. The Chief Executive Officer's report is to assist Council Members assess whether the decision should be deferred for consideration by the incoming Council.
- 7.6. The Chief Executive Officer's report to Council will address the following issues (where relevant):
 - 7.6.1. why the matter is considered 'significant';
 - 7.6.2. why the matter is considered urgent;
 - 7.6.3. what are the financial and other consequences of postponing the matter until after the election, both on the current Council and the incoming Council;
 - 7.6.4. whether deciding the matter will significantly limit options for the incoming Council;
 - 7.6.5. whether the matter requires the expenditure of unbudgeted funds;
 - 7.6.6. whether the matter is the completion of an activity already commenced and previously endorsed by Council;
 - 7.6.7. whether the matter requires community engagement;
 - 7.6.8. any relevant statutory obligations or timeframes; and
 - 7.6.9. whether dealing with the matter in the election period is in the best interests of the Council area and community.
- 7.7. Council will consider the Chief Executive Officer's report and determine whether or not to make the decision.

8. Events

- 8.1 The following Council organised events and ceremonies will have the following variations and/or restrictions during the election period;
 - 8.1.1. **Citizenship Ceremonies**
Formal Citizenship Ceremonies will take place during the election period under the delegation of the Chief Executive Officer.
 - 8.1.2. **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.
 - 8.1.3. **Opening Ceremonies**
Ceremonies set up for the opening of a Council owned/managed facility (i.e. neighbourhood house) will be deferred until the conclusion of the election period.
- 8.2 No civic/major events will be scheduled to take place within the election period unless the event is a state or metropolitan wide activity. Examples of events not to be scheduled include the Marion Learning Festival and Marion Celebrates.
- 8.3 Where an event is a state/metropolitan wide activity, the official duties and formalities will be undertaken by the Chief Executive Officer.

- 8.4 Where an elected member is not nominating as a candidate in the 2014 election in the City of Marion, that such elected member be available to undertake various duties as they arise under this section.

9. Media

- 9.1 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.
- 9.2 Council staff (including the Communications Unit Manager) will not provide media advice to the Elected Members who have nominated as candidates regarding public comment on the elections. These matters will be referred to the Chief Executive Officer for comment and action whenever possible.
- 9.3 Council's social media accounts will be used to promote the upcoming Election process and it will::
- 9.3.1 Encourage people to vote, including links to candidate information on the LGA candidate website;
 - 9.3.2 not promote or link to any Elected Member or candidate's social media accounts;
 - 9.3.3 not re-tweet or share any Elected Member or candidate's social media posts;
 - 9.3.4 respond to Elected 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 Communications Unit Manager and the Governance Manager, and included in the Information Request Register as per part 4 clause 11 of this policy.

10. Publications

- 10.1 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;
- 10.1.1 any advertisement, handbill, pamphlet or notice that contains 'electoral material' during the election period.
 - 10.1.2 Electoral material means any material which is calculated (i.e. intended or likely) to affect voting in an election.
- 10.2 Elected Members will observe the requirements of the Publications Policies and the following publications restrictions will apply during the election period;
- 10.2.1 **City Limits**
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.

Elected Member columns will not be included in editions published during caretaker. The profiles of all Candidates may be included in place of the Elected Member columns.
 - 10.2.2 **Annual Report**
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*.

PART FOUR: MISCELLANEOUS

11. 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 Council Support. This Register will be a public document that records all requests information and customer requests made by Elected Members and Candidates, and the response given to those requests, during the election period.

12. Contact with Staff

- 12.1 The Chief Executive Officer is committed to ensuring Elected Members are provided with the appropriate support to continue to fulfil their official duties and responsibilities during the election period.
- 12.2 During the election period, Elected Members will direct all queries, requests and access to information through the Executive Management Group, Manager Governance or the Unit Manager Council Support.
- 12.3 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;
 - 12.3.1 Council staff will not undertake any activity that may affect voting in the election;
 - 12.3.2 Council staff will not authorise, use or allocate a Council resource for any purpose which may influence voting in the election; and
 - 12.3.3 Council staff will not assist Elected Members in a way that is or could create a perception that they are being used for electoral purposes.

13. Elected Members Training and Development

- 13.1 The provisions within the Elected Members Professional Development Policy will be considered by council during the election period.
- 13.2 Opportunities relating to an Elected Member's official liaison role will continue as business as usual.

14. Application of Policy

- 14.1. This policy applies throughout the election period for a general election. For the purposes of the Local Government Elections of November 2014, the policy commences on 16 September 2014 and ends at the conclusion of the election, when results have been declared.
- 14.2. This policy applies to:
 - 14.2.1. the Council; and
 - 14.2.2. Council staff.

15. Grievances

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

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

16. Related Policies

This Policy forms part of, and is to be read in conjunction with, the Elected Members Code of Conduct and Staff Code of Conduct in accordance with Section 91A(7) of the Act.

This Policy should also be read in conjunction with the following;

- Elected Members Expenses, Benefits, Support and Facilities Policy.
- Elected Member Publications Policy
- Information Technology – Provision and Use of Equipment Policy.
- Community Awards and Recognition Policy

17. Further Information

For further information about the Election Caretaker Policy, please contact:

- council@marion.sa.gov.au or
- Unit Manager, Council Support
Phone: 8375 6641

18. Council Endorsement

This Policy was adopted by resolution of the Council on 8 July 2014.

19. Review and Evaluation

This Policy is scheduled for review by Council June 2018.