

## INTRODUCTION

The purpose of this Policy is to clearly set the parameters that Council will operate within during a Caretaker period. Caretaker provisions are required pursuant to section 91A of the *Local Government (Elections) Act 1999* and are generally regarded as necessary for the promotion of transparent and accountable government during an election period.

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

## PRINCIPLES

It is 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.

This policy affirms Council's commitment to fair and democratic elections, and adherence to this principle. This policy includes a commitment to comply with the requirements of Section 91A of the *Local Government (Elections) Act 1999* and also includes recognised best-practice standards for Councils during an election period.

## APPLICATION

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.

This policy applies to:

- the council; and
- council staff

## DEFINITIONS

<i>caretaker mode</i>	means the conduct of the council and its staff during the election period for a general election.
<i>Chief Executive Officer</i>	means the appointed Chief Executive Officer or Acting Chief Executive Officer or nominee.
<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 elected member of the Barunga West Council.
<i>designated decisions</i>	means a decision: <ul style="list-style-type: none"><li>(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;</li><li>(b) to terminate the appointment of the Chief Executive Officer;</li><li>(c) to enter into a contract, arrangement or understanding (other than a contract for road construction, 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:<ul style="list-style-type: none"><li>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);</li><li>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;</li><li>iii. relates to the employment of a particular Council employee (other than the Chief Executive Officer);</li><li>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</li></ul></li></ul>

- v. relates to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the Council;

<i>election period</i>	means the period commencing on the opening day of the commencement of nominations and expiring at the conclusion of the election.
<i>general election</i>	means a periodic election held under Section 5 of the <i>Local Government (Elections) Act 1999</i> , or an election pursuant to a proclamation or notice under the <i>Local Government Act 1999</i> .
<i>prescribed contract</i>	means a contract entered into by a council for the purpose of undertaking— <ul style="list-style-type: none"><li>o road construction or maintenance; or</li><li>o drainage works.</li></ul>
<i>Minister</i>	means the Minister for Local Government or other minister of the South Australian government vested with responsibility for the <i>Local Government (Elections) Act</i> .

## POLICY DETAILS

### 1. BACKGROUND

The *Local Government (Elections) (Miscellaneous) Amendment Act 1999* was assented to on 5 November 2009. This Act provides for a number of amendments to the *Local Government (Elections) Act 1999*, the most important of which for these purposes is the introduction of mandatory caretaker provisions. These provisions require the adoption of a caretaker policy to govern the conduct of the Council (Council Members) and its staff during the election period for a general election.

This Policy applies during an election period of Council to cover:

- designated decisions as defined in the *Local Government (Elections) Act 1999* that are made by Council;
- other significant decisions that are made by the Council;
- responsibilities of Council staff;
- materials published by Council;
- attendance and participation in functions and events;
- use of Council resources
- access to Council information; and
- media services issues.

This Policy applies to both the elected Council (Council Members) and to staff and captures all designated decisions of Council, a committee of Council, or a delegate of the Council.

This Policy forms part of (and is to be read in conjunction with) the Council's Elected Member Code of Conduct and Staff Code of Conduct in accordance with Section 91A(7) of the *Local Government (Elections) Act 1999*.

### 2. ELECTION PERIOD

During an election period Council must assume a caretaker mode which means that it:

- must avoid decisions which are prohibited by Section 91A of the *Local Government (Elections) Act 1999*; and
- will avoid making decisions which will unnecessarily or inappropriately bind the incoming Council; and
- will otherwise strive to avoid other actions and decisions which could also be perceived as influencing or having the potential to influence voters or to have a significant impact on the incoming Council.

An **election period**:

- **commences** on the opening day of nominations; and
- **terminates** at the conclusion of the election (as defined at Section 4(2) of the *Local Government Act 1999*) for the relevant periodic or general election being the time at which the last result of the election is certified by the returning officer.

Hence the election period commences on the 6<sup>th</sup> Tuesday after the closing date for the voters roll, (approximately 7 weeks before polling day for a periodic election, and at least 21 days before polling day for a general election), and runs until the returning officer certifies the election results.

### 3. CONDUCT AFFECTED BY THIS POLICY

This Policy applies to the following types of conduct:

#### 3.1. Mandatory Policy Provisions

- (a) designated decisions which are prohibited under the *Local Government (Elections) Act 1999* — refer to Clause 4.3.

#### 3.2. Discretionary Policy Provisions

- (a) Other significant decisions not within Clause 3.1(a) above but which are binding on the incoming Council and prohibited by this Policy — refer to Clause 4.4.
- (b) Responsibilities of Council staff in regard to upholding the objectives of this Policy, and reporting breaches of this Policy – refer to Clause 5.
- (c) Publication of Council material; in particular any material which has reference in it to a candidate (including current Council Members), the election, or an issue before the voters in connection with the election — refer to Clause 6.
- (d) Public consultation processes — refer to Clause 7.
- (e) Attendance at functions or events by Council Members — refer to Clause 8.
- (f) The use of Council resources by Council members – refer to Clause 10.
- (g) Council Member access to Council information — refer to Clause 11.  
Council Member requests for media advice or services — refer to Clause 12.

### 4. SIGNIFICANT DECISIONS

#### 4.1. Application of clause

This clause applies to decisions of Council, a committee of Council, or a delegate of Council.

#### 4.2. Scheduling consideration of designated decisions

The Chief Executive Officer must ensure that designated decisions are not scheduled for consideration during the election period.

#### 4.3. Designated decisions prohibited by the *Local Government (Elections) Act 1999*

The following table outlines those decisions which are expressly prohibited by Section 91A of the Local Government (Elections) Act 1999.

<b>Designated Decisions</b>	
(a)	A decision relating to the employment or remuneration of the Chief Executive Officer, (other than a decision to appoint an acting Chief Executive Officer) other than a decision of a kind excluded from the definition of designated decision by regulation.
(b)	A decision to terminate the appointment of the Chief Executive Officer
(c)	<p>A decision to enter into a contract, arrangement or understanding (other than a prescribed contract) 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, other than a decision of a kind excluded from the definition of designated decision by regulation.</p> <p>A prescribed contract means a contract entered into by the Council for the purpose of undertaking road construction or road maintenance or drainage works.</p> <p><b>(For the Barunga West Council this amount is \$100,000).</b></p>
(d)	A decision 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 for election), other than a decision of a kind excluded from the definition of designated decision by regulation.

If the Council considers that there are extraordinary circumstances which require the making of any of the above decisions, the Council may apply in writing to the Minister for an exemption, the effect of which would be to allow such a designated decision to be made during the election period and Council and Council Staff will comply with any conditions or limitations imposed by the Minister on the exemption.

The Local Government (Elections) Act 1999, Section 91A stipulates that any designated decision made by the Council during the election period without an exemption from the Minister is invalid. Furthermore, it also stipulates that the Council is liable to pay compensation to any person who suffers loss or damage as a result of acting in good faith in reliance on such a designated decision.

#### **4.4. Other significant decisions which are prohibited by operation of this Policy**

<b>Prohibited Decision</b>	<b>Is it allowed?</b>	<b>Notes</b>
An irrevocable major policy or otherwise significant decision that significantly affects the Council	No – unless approval is granted by the Chief Executive Officer – see Clause 4.5 below.	This is an internal requirement of Council
Any other major policy or other significant decision not specified above which will bind the incoming Council	No - unless approval is granted by the Chief Executive Officer – see Clause 4.5 below.	This is an internal requirement of Council

Alternatively and, so far as is reasonably practicable, the Chief Executive Officer should avoid scheduling other significant (including major policy) decisions for consideration during an election period and, instead, ensure that such decisions are either:

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

#### **4.5. Role of the Chief Executive Officer**

The determination as to whether any policy decision is major or any other decision is significant will be made by the Chief Executive Officer.

#### **4.6. Considerations for the Chief Executive Officer in giving approval**

In the case of a major policy or other significant decision referred to the Chief Executive Officer as otherwise being prohibited by Clause 4.4 above, in deciding whether to grant approval, the Chief Executive Officer must have regard to all of the circumstances, including but not limited to:

- (a) whether the decision is significant;
- (b) the urgency of the issue (i.e. can it wait until after the election?);
- (c) the possibility of financial repercussions if it is deferred;
- (d) whether the decision is likely to be controversial; and
- (e) the best interests of the Council;

and he/she may consult with the Audit Committee in this regard.

#### **4.7. Decisions made prior to an 'election period'**

This Policy applies to actual decisions made during an election period, not the announcement of decisions made prior to the election period. Whilst announcements of earlier decisions may be made during an election period, as far as practicable any such announcements should be made before the election period begins.

### **5. COUNCIL STAFF RESPONSIBILITIES DURING AN ELECTION PERIOD**

Prior to any election period, the Chief Executive Office will ensure that all members of Council staff are advised in relation to the application of this Caretaker Policy.

- 5.1.** Council staff must not undertake an activity that may affect voting in the election, except where the activity relates to the election process and is authorised by the Chief Executive Officer; and
- 5.2.** Council staff must not authorise, use or allocate a Council resource for any purpose which may influence voting in the election, except where it only relates to the election process and is authorised by the Chief Executive Officer; and
- 5.3.** Council staff must not assist Council Members in ways that are or could create a perception that they are being used for electoral purposes. In any circumstances where the use of Council resources might be construed as being related to a candidate's election campaign, the incident must be reported to and advice sought from the Chief Executive Officer.

### **6. COUNCIL PUBLICATIONS DURING AN 'ELECTION PERIOD'**

#### **6.1. Prohibition on publishing certain materials during an 'election period'**

Subject to the operation of Section 12(b) of the *Local Government (Elections) Act 1999* Council must not:

- (a) print, publish or distribute; or
- (b) cause, permit or authorise others to print, publish or distribute on behalf of Council,

any advertisement, handbill, pamphlet or notice that contains electoral material during an election period.

Council Members are, however, permitted to publish campaign material on their own behalf, but cannot assert for that material to be originating from, or authorised by, Council (e.g. by the use of Council logos).

This Policy does not prevent publications by Council which merely announce the holding of an election or relate only to the election process itself for the purposes of Section 12(b) of the *Local Government (Elections) Act* or otherwise.

**Note:** *The term publication should be interpreted broadly and includes electronic and web based materials.*



## **6.2. Electoral Material**

For the purposes of this Policy electoral material means material which is calculated (i.e. intended or likely) to affect voting in an election. However, it does not include any materials produced by Council relating to the election process by way of information, education or publicity, or materials produced by or on behalf of the returning officer for the purposes of conducting an election.

Without limiting the generality of this definition, material will be considered to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on:

- (a) the election; or
- (b) a candidate in the election; or
- (c) an issue submitted to, or otherwise before, the voters in connection with the election.

## **6.3. Council website**

During an election period, new material which is precluded by this Policy will not be placed on the Council website. Any information which refers to the election will only relate to the election process by way of information, education or publicity. Information about Council Members will be restricted to names, contact details, titles, membership of committees and other bodies to which they have been appointed by the Council.

The Council's website will include an express link or reference to the Local Government Association publication of candidate profiles and electoral statements for the purposes of Section 19A of the *Local Government (Elections) Act 1999*.

## **6.4. Other Council publications**

Insofar as any Council publications, such as the Annual Report, are required to be published during an election period, the content contained within them regarding Council Members will be restricted to that strictly required by the *Local Government Act 1999* and Regulations.

Council publications produced before an election period containing material which might be construed as electoral material are not to be circulated or displayed during the election period. However, they may be made available to members of the public on request.

## 7. PUBLIC CONSULTATION DURING AN ELECTION PERIOD

### 7.1. Prohibition

It is prohibited under this Policy for discretionary public consultation to be undertaken during the election period (either new consultation or existing) on an issue which is contentious unless prior approval is given by the Council or the Chief Executive Officer.

For the purpose of this provision, discretionary public consultation means consultation which is not legislatively mandated and is a process which involves an invitation or invitations to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy.

This Policy does not prevent any mandatory public consultation required by the *Local Government Act* or any other Act which is required to be undertaken to enable the Council to fulfil its functions in relation to any matter or decisions which are not prohibited by this Policy.

### 7.2. Approval for public consultation

Given the prohibition under Clause 7.1 of this Policy, Council should not commission or approve any public consultation where it is likely that such consultation will continue into an election period, unless Council or the Chief Executive Officer provide prior approval for such consultation to occur in the election period.

Where public consultation is approved to occur during an election period, the results of that consultation will not be reported to Council until after the election period, except where otherwise approved by the Chief Executive Officer or necessary for the performance of functions as set out at Clause 7.1 above.

## 8. ATTENDANCE AT EVENTS AND FUNCTIONS DURING AN 'ELECTION PERIOD'

In this clause, reference to events and functions means gatherings of internal and external stakeholders to discuss, review, acknowledge, communicate, celebrate or promote a program, strategy or issue which is of relevance to Council and its community and may take the form of conferences, workshops, forums, launches, promotional activities, and social occasions such as dinners, receptions and balls.

### 8.1. Events staged by external bodies

Council Members may continue to attend events and functions staged by external bodies during an election period.

### 8.2. Council events and functions

Council organised events and functions held during the election period will be reduced to only those essential to the operation of the Council. This may be varied by a Council resolution or where prior approval has been given by the Chief Executive Officer.

### **8.3. Addresses by Council Members**

Council Members may not give speeches or keynote addresses at Council organised or sponsored events and functions during an election period.

Council Members may, however, make short welcome speeches at Council organised or sponsored events and functions during an election period where prior approval is given by the Chief Executive Officer.

### **8.4. Recording of attendance at external meetings and functions**

The noting of attendances of Council Members at external meetings and functions in attendance records may be undertaken unless in doing so the Council Member is connected with information or promotional text or images contained elsewhere in the material.

### **8.5. Publication of promotional material**

In preparing any material concerning a Council organised or sponsored function or event which will be published or distributed during the 'election period', such preparation must be consistent with Clause 9 of this policy.

## **9. CONSIDERATION IN GIVING APPROVAL UNDER CLAUSES 7 OR 8**

In the case of matters referred to the Chief Executive Officer under Clauses 7 or 8 of this Policy (which not expressly prohibited under Clause 6) of the Policy, when deciding whether to give approval the Chief Executive Officer should have regard to all of the circumstances, including but not limited to:

- (a) whether the decision is significant;
- (b) the urgency of the issue (i.e. can it wait until after the election?);
- (c) the possibility of financial repercussions if it is deferred;
- (d) whether the decision is likely to be controversial; and
- (e) the best interests of Council.

and may as he/she thinks fit, consult with the Council's Audit Committee.

## 10. COUNCIL RESOURCES

Council is to ensure that due propriety is observed in the use of Council resources and Council staff are required to exercise appropriate discretion in this regard.

### 10.1. Council resources

10.1.1 Council resources, including officers, support staff, hospitality services, equipment and stationery must be used exclusively for normal Council business during an election period and, must not be used in connection with an election other than uses strictly relating to the election process.

10.1.2 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 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 (e.g. public library);
- Council-provided business cards;
- Requests to council employees to perform tasks which would confer an advantage on a candidate or group of candidates;
- The ability to issue invitations to council events;
- 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 (e.g. a Mayor's Parlour at a suburban football oval); or
- Councils produced promotional brochures and documents

10.1.3 Despite paragraph 10.1.1, the Council may determine those Council resources that may be used by all candidates for election on an equal basis.

## **10.2. Correspondence**

General correspondence addressed to Council Members will be answered as usual. However, Council Members will sign only the necessary minimum of correspondence during an election period.

Correspondence in relation to significant, sensitive or controversial matters should be signed by the Chief Executive Officer. Replies will be prepared in a manner to protect Council staff from any perceptions of political bias.

## **10.3. Expenses incurred by Council Members**

Payment or reimbursement of costs relating to Council Members out-of-pocket expenses incurred during an election period must only apply to necessary costs that have been incurred in the performance of normal Council duties not campaigning, and not for expenses that could be perceived as supporting or being connected with a candidate's election campaign.

In the case of Council Member claims that cover a combination of Council and electoral business, the Chief Executive Officer may approve the partial reimbursement to cover Council activities.

## **10.4. Council branding and stationery**

No Council logos, letterheads, or other Council branding or subject to clause 10.1.3 Council resources or facilities may be used for, or linked in any way with, a candidate's election campaign.

## **10.5. Support staff to Council Members**

Support Staff to Council Members must not be asked to undertake any tasks connected directly or indirectly with an election campaign.

## **10.6. Community meetings**

Community meetings will not be held during an election period.

## **10.7. Equipment and facilities**

Equipment and facilities provided to Council Members for the purpose of conducting normal council business must not be used for campaigning purposes.

Where Council Members have council-funded services such as mobile phones, and where it is impractical for Council Members to discontinue their use of these during an election period, Council Members must reimburse the Council for usage of those services during the election period.

## 11. ACCESS TO COUNCIL INFORMATION

Council Members continue during an election period to have a statutory right to access Council information relevant to the performance of their functions as a Council Member. This right should be exercised with caution and limited to matters that the Council is dealing with within the objectives and intent of this Policy. Any Council information so accessed must not be used for election purposes.

All candidates have equal rights of access to public information relevant to their election campaigns from Council administration. Neither Council Members nor candidates will be provided with information or advice from Council staff that might be perceived to support election campaigns, and there shall be transparency in the provision of all information and advice during an election period.

### 11.1. Information and briefing material

Information and briefing material prepared or secured by staff for a Council Member during an election period must be necessary to the carrying out of the Council Member's role and must not be related to election issues or to issues that might be perceived to be of an electoral nature.

### 11.2. Information Request Register

An Information Request Register will be maintained by the Executive Research Officer during an election period. This Register will be a public document that records all requests for information made by Council Members and candidates, and the response given to those requests, during the election period. Staff will be required to provide details of requests to the Executive Research Officer for inclusion in the Register.

## 12. MEDIA SERVICE

Council's media services are directly managed by or under the supervision of the Chief Executive Officer, are provided solely to promote Council activities or initiatives and must not be used in any manner that might favour a candidate during an election period.

### 12.1. Media advice

Any request for media advice or assistance from Council Members during an election period will be referred to the Chief Executive Officer. No media advice will be provided in relation to election issues or in regard to publicity that involves specific Council Members.

If satisfied that advice sought by a Council Member during an election period does not relate to the election or publicity involving any specific Council Members, the Chief Executive Officer may authorise the provision of a response to such a request.

## **12.2. Media releases / spokespersons**

Media releases will not refer to specific Council Members. Where it is necessary to identify a spokesperson in relation to an issue, the Chief Executive Officer will determine the appropriate person.

## **12.3. Publicity campaigns**

During the election period, publicity campaigns, other than for the purpose of conducting the election in accordance with the requirements of Section 12(b) of the Local Government (Elections) Act 1999 will be avoided wherever possible. Where a publicity campaign is deemed necessary for a Council activity, it must be approved by the Chief Executive Officer.

In any event, Council publicity during an 'election period' will be restricted to communicating normal Council activities and initiatives without any variation in form or size.

## **12.4. Council Members**

Council Members will not use their position as an elected representative or their access to Council staff and other Council resources to gain media attention in support of an election campaign.

## **12.5. Council employees**

During an 'election period', no Council employee may make any public statement that relates to an election issue unless such statements have been approved by the Chief Executive Officer.

## **13. EQUITY IN ASSISTANCE TO CANDIDATES**

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

### **13.1. Candidate assistance and advice**

Any assistance and advice provided to candidates as part of the conduct of the Council Election will be provided equally to all candidates. The types of assistance that are available will be documented and communicated to candidates in advance.

### **13.2. Election process enquiries**

All election process enquiries from candidates, whether current Council Members or not, will be directed to the Returning Officer or, where the matter is outside of the responsibilities of the Returning Officer, to the Chief Executive Officer.

## 14. LEGISLATION

*Local Government (Elections) Act 1999*  
*Local Government (Elections) Regulations 2010*  
*Local Government Act, 1999*  
*Local Government Court of Disputed Returns Rules 2000*

## 15. REVIEW

This Policy shall be reviewed by The Barunga West Council each four years.

## 16. AVAILABILITY AND GRIEVANCES

This Policy is available for inspection, download or printing, free of charge, from Council's website: [www.barungawest.sa.gov.au](http://www.barungawest.sa.gov.au)

A printed copy may be purchased on request from the Council office at 11 Bay Street, Port Broughton during ordinary business hours.

Any grievances in relation to this policy or its application should be forwarded in writing addressed to:

Chief Executive Officer, Barunga West Council  
 PO Box 3  
 Port Broughton SA 5522

Date	Revision Number	Reason for Amendment
11.03.2014	01	Adopted by Council
08.05.2018	02	Reviewed by Council
18.01.2022	03	Review adopted by Council