

1. POLICY OBJECTIVES

The objectives of these Guidelines are to:

1. achieve clarity of the policy position and approach of Council, and to incorporate issues of SA Power Networks and Transport Services Division of the Department of Planning, Transport and Infrastructure (DPTI) as they relate to their respective interests, thereby enabling a single approval (from Council) covering the interests of all three parties;
2. establish a policy which is to be applied consistently and equitably to all political parties and candidates in elections;
3. achieve consistency of approach within a Council area, whilst recognising that some variation may occur from one Council area to another;
4. provide a summary of the legal position;
5. provide information on whom to contact within Council;
6. provide information on how to make application to Council; and
7. minimise any threat to public safety from the placement of signs.

2. DEFINITIONS

References in this document to:

the "**Council**" means the District Council of Barunga West

"**Election**" is to be interpreted to include periodic and general elections, by-elections and supplementary elections, referenda and polls as far as they relate to Federal, State or Local Government elections.

"**Infrastructure**" includes (but is not limited to) poles, light poles, traffic signs, traffic lights, traffic control boxes, and other traffic control devices, transformer boxes, trees, fences, bridges whether owned or under the care, control or management of SA Power Networks, DPTI or the Council.

"**Moveable sign**" in these Guidelines means a moveable election advertisement or election sign – i.e. one that can be moved or removed without causing any damage to the object or land upon which it is placed or attached, whether free-standing or not.

"**Pole**" is to be interpreted to include (but is not limited to) stobie poles, light poles and poles upon which traffic control devices or road name signs are affixed, whether owned or under the care, control or management of SA Power Networks, DPTI or the Council.

"**Public Place**" is to be interpreted within the definition of *public place* under the *Local Government Act 1999* – i.e. a place (including a place on private land) to which the public has access, but does not include any part of a community parcel divided by a plan of community division under the *Community Titles Act 1996*.

"Public Road" is to be interpreted within the definition of *public road* under the *Local Government Act 1999* – i.e.

- (a) any road or land that was, immediately before 1 January 2000, a public street or road under a repealed Act;
- (b) any road –
 - (i) that is vested in a council under any Act; or
 - (ii) that is placed under a council's care, control and management as a public road from 1 January 2000 to the present, but not including an alley, laneway, walkway or other similar thoroughfare vested in a council; or
- (c) any road or land owned by a council, or transferred or surrendered to a council and which, subject to the Local Government Act 1999 is declared by the council to be a public road; or
- (d) any land shown as a street or road on a plan of division deposited in the Lands Titles Registration Office or the General Registry Office and which is declared by the council to be a public road; or
- (e) any land transferred or surrendered to the Crown for use as a public road that was, immediately before the transfer, held by a person in fee simple or under a lease granted by the Crown,
(and includes any such road which is within the boundaries of a public square)

"Road" is to be interpreted within the definition of *road* under the *Local Government Act 1999* – i.e. a public or private street, road or thoroughfare to which public access is available on a continuous or substantially continuous basis to vehicles or pedestrians or both and includes -

- (a) a bridge, viaduct or subway; or
- (b) an alley, laneway or walkway;

and for the purposes of clarification extends from property boundary to property boundary.

"Signs" in these Guidelines includes moveable election signs where appropriate and also includes election posters that comprise an advertisement for a candidate or party in an election, or for a referendum or poll.

3. SUMMARY AND PURPOSE

Summary

A person **may** place and maintain free-standing moveable signs (such as a-frames, sandwich boards, etc) on footpaths and road reserves within public roads (i.e. on the ground, and not attached to, or leaning against, any object in the road) without requiring prior authorisation from the Council, provided:

- the sign is related to a State or Commonwealth election and is displayed during the period commencing with the issuing of the writ(s) for the election and ending at the close of polls on polling day,¹ or
- the sign is related to a Local Government election and is displayed during the period commencing 4 weeks before the date set for polling day and ending at the close of voting on polling day,² or
- the design and structure, the positioning of the sign and any other relevant requirements of the Development Act and any applicable Council by-law are complied with.

As of August 2017, provided that the requirements of this Policy are fully complied with, it is not a requirement to make application to Council or the Relevant Authorities (SAPN etc) for permission to display moveable election signs.

¹ Although this is the strict legal position, Councils acknowledge that this requirement is very onerous and accordingly, Council allows a period of 48 hours from the close of polling for the removal of election signs – see clause 5.1.1 of these Guidelines.

² See above.

4. LEGAL POSITION RELATING TO ELECTION SIGNS

4.1 Local Government Act 1999

All public roads within the Council's area are vested in the Council.³ All trees on public roads and signs and other objects put in or on roads by the Council belong to the Council, but only where the Council is the owner of the infrastructure.

All fixtures and equipment installed in, on, across, under or over a public road by the provider of public infrastructure remain the property of the provider of that infrastructure⁴. This means the provider of the infrastructure may not be Council. Some fixtures and equipment installed in, on, across, under or over a public road may be owned by the Council (or a third party), but may be under the care, control and management of DPTI (through the Commissioner of Highways) or SA Power Networks.

All fixtures and equipment installed in, on, across, under or over a public road under an authorisation or permit from the Council remain, subject to the conditions of the authorisation or permit, the property of the holder of the authorisation or permit.⁵

4.1.1 Permanent (i.e. non-moveable) signs

It is an offence to erect or install a structure ("structure" includes pipes, poles, fixtures, fitting or other objects) in, on, across, over or under a public road without authorisation from Council.⁶ A maximum penalty of \$5,000 applies.

A Council may remove and dispose of any structure or object (which includes an election sign) which has been erected, placed or deposited on a public road without authorisation, and recover the cost of doing so from the person who erected, placed or deposited the structure or object.⁷

4.1.2 Moveable signs

A Council can make a by-law to regulate moveable signs (refer Council By-Law 3). This is a separate power that Council's can exercise subject to the adoption of the appropriate by-law. Such by-laws may prohibit the posting of bills, advertisements or other papers or items on a building or structure on a road, other Local Government land or other public place, without the permission of the Council.⁸

By-laws which implement controls for signs **other than moveable signs** on roads ordinarily provide exemptions for election signs authorised by a candidate during a Commonwealth, State or Local Government election and when a referendum is being held.

³ Local Government Act 1999 s 208

⁴ Local Government Act 1999 s 209(1)

⁵ Local Government Act 1999

⁶ Local Government Act 1999 s 221(d)

⁷ Local Government Act 1999 s 234

⁸ Local Government Act 1999 s 240

It is an offence to interfere with any structure on a public road (“structure” includes pipes, poles, fixtures, fitting or other objects),⁹ without approval from the Council.

However, a person may place and maintain a free-standing, moveable election sign on a road without authorisation provided:

- the sign is related to a State or Commonwealth election and is displayed during the period commencing with the issuing of the writ(s) for the election and ending at the close of polls on polling day, or
- the sign is related to a Local Government election and is displayed during the period commencing 4 weeks before the date set for polling day and ending at the close of voting on polling day.

Where a moveable sign fails to satisfy these requirements, a person authorised by Council may order the owner to remove the sign, or if the owner is unknown or fails to comply immediately with the order, may remove and dispose of the sign.¹⁰

Council is also authorised by DPTI and SA Power Networks to regulate the placement of signs on infrastructure which is owned by, or under the care, control and management of DPTI and SA Power Networks.

4.2 Local Government (Elections) Act 1999 (Applicable to Local Government elections only)

A person who publishes electoral material must include the name and address of the person who authorises the publication and in the case of printed material, the name and address of the printer or other person responsible for its production. A maximum fine of \$2,500 applies.¹¹

It is an offence to publish electoral material that purports to be a statement of fact and yet is inaccurate and misleading to a material extent. A maximum fine of \$5,000 applies.¹²

⁹ *Local Government Act 1999* s 221(b)

¹⁰ *Local Government Act 1999* s227

¹¹ *Local Government (Elections) Act 1999* s 27

¹² *Local Government (Elections) Act 1999* s 28

4.3 Development Act 1993

Signs may be "development" requiring approval under the Development Act. Signs will not be development if they fall within one of the exceptions to the definition of "development" contained in Schedule 2 or Schedule 3 of the Development Regulations 2008.

Outside the City of Adelaide:

- signs which are "moveable signs" as defined in the Local Government Act are not development if they are placed on a public street, road or footpath.¹³
- other signs, including moveable signs which are not placed on a public street, road or footpath (called "advertisements" and "advertising displays" in the Regulations) are not development if:
 1. they are displayed on a building or building in separate occupation (other than the side or rear walls of a building) used primarily for retail, commercial, office or business purposes, subject to the following conditions:
 - that the advertisement is not displayed or erected above any verandah or the fascia of a verandah or, in a case where there is no verandah, that no part of the advertisement is more than 3.7 metres above ground level; and
 - that the advertising display:
 - does not move; and
 - does not flash; and
 - does not reflect light so as to be undue distraction to motorists; and
 - is not internally illuminated;¹⁴
 2. for signs not displayed on commercial, office or business purpose buildings:
 - the total advertisement area of all advertisements of the same kind displayed on one building or site is not more than 2 square metres; and
 - that the advertising display:
 - does not move; and
 - does not flash; and
 - does not reflect light so as to be undue distraction to motorists; and
 - is not internally illuminated;¹⁵

All signs which do not fit within these exemptions must be approved under the Development Act before they are placed on roads or affixed to buildings or structures.

Further, where advertisements are not authorised under the Local Government Act, or the Local Government (Elections) Act, Council has the power to serve a notice on the owner or occupier or land on which an sign is located directing that person to remove or obliterate the sign where the advertisement or hoarding:

- disfigures the natural beauty of a locality;
- detracts from the amenity of a locality; or
- is contrary to the character desired from the locality under the Council's Development Plan.¹⁶

¹³ *Development Regulations 2008* schedule 3, clause 1(h)

¹⁴ *Development Regulations 2008* schedule 3 clause 1(e)

¹⁵ *Development Regulations 2008* schedule 3, clause 1(f)

¹⁶ *Development Act 1993* s 74

4.4 Electoral Act 1985 (SA)

Councils do not have the power to regulate the content of electoral signs.

Queries in relation to the provisions of the Electoral Act 1985 should be directed to the Electoral Commission of South Australia, telephone (08) 7424 7400.

4.5 Commonwealth Electoral Act

Queries in relation to the provisions of the Commonwealth Electoral Act should be directed to the Australian Electoral Commission, telephone (08) 8237 6555.

4.6 Criminal Law Consolidation Act 1935

It is an offence under this Act to steal or deface an electoral sign or poster. Any alleged offence will be referred to the SA Police for their attention.

4.7 Summary Offences Act 1953

It is an offence under this Act to:

- exhibit indecent or offensive material in a public place or so as to be visible from a public place; or
- deposit indecent or offensive material in a public place.¹⁷

Any alleged offence will be referred to the SA Police for their attention.

¹⁷ *Summary Offences Act 1953* s33(2)(c) and (d)

5. POLICY RULES

5.1 Election Signs in Public Places

These Guidelines provide that prior to any signs (that are not freestanding moveable signs placed on a road) are posted, affixed or erected on infrastructure on a road that is under the care and control of Council, SA Power Networks or DPTI for the purposes of candidate promotion in Federal, State or Local Government elections, Council consent **must** be obtained.

Where Council consent is given, the following terms and conditions for signs must be complied with:

5.1.1 Signs must:

- not be more than 1 square metre in area and be limited to one sign per site/pole. A back to back sign facing two directions is considered to be one sign for this purpose. (For private fences a larger area is permissible – refer to point 4 below).

[Note: Places designated as polling booths/places for Federal and State Elections and Referenda will not be subject to this requirement on polling day only.];

- only be displayed, in the case of State and Commonwealth elections during the period commencing on the issue of the writ or writs for the election and ending at the close of polls on polling day. Should they not be removed within two days (48 hours of the close of voting) they will be considered illegal signs/posters and Council will implement the provisions of this policy (refer below to 6. ILLEGAL SIGNS);
- only be displayed, in the case of local government elections, during the period commencing 4 weeks immediately before the date set for polling day and ending at the close of voting on polling day. Should they not be removed within 2 days (48 hours of the close of voting) they will be considered illegal signs/posters and Council will implement the provisions of this Policy (refer below to 6. ILLEGAL SIGNS);
- be securely fixed or posted and maintained in good repair and condition at all times;
- be designed, made, and presented in a quality manner (the intent is that signs must not tear apart and become a danger to road users and end up as litter)
- contain clear and legible writing or symbols;
- contain the name and address of both the person authorising the promotional material (the publisher) and the printer of it; and
- be fastened securely so that they cannot become detached in high winds and endanger Council, SA Power Networks or DPTI property or equipment or pose a danger to the public.

5.1.2 Signs must not:

- be illuminated (internally or indirectly), move, flash, rotate, or reflect so as to be an undue distraction to drivers;
- be self adhesive. All individual promotional material affixed under the terms of this consent may only be affixed by non-invasive means that do not cause damage of any type to the structure to which the material is affixed. If a paste is to be used, it must be of a water based/wallpaper type (or similar);
- be affixed under any circumstances to trees, shrubs, or other plants or at any location that may cause damage to Council, SA Power Networks or DPTI property;
- be placed on a carriageway, dividing strip (median), traffic island, roundabout, or within 50 metres of a signalised intersection, roundabout or pedestrian activated crossing, or on the South-Eastern Freeway, the Southern Expressway, the Port River Expressway or the Northern Expressway;
- be placed within 6 metres of an intersection or junction, or in any other location that may pose a hazard to pedestrians or road users;
- be attached to any street name, traffic direction or parking sign or to the associated pole;
- be erected on poles or towers carrying electricity transmission lines (these are generally lines utilising greater span lengths with significantly taller poles or towers supporting electrical wires);
- be attached to SA Power Networks pad-mounted transformers or switching cubicles;
- be attached to the fences of any fenced SA Power Networks equipment including substations, transformer stations and regulator stations;
- be placed so as to cover any Council, SA Power Networks or DPTI numbering, signs or other markings;
- be placed on DPTI structures with the exception of "gooseneck" light poles belonging to DPTI. Structures which belong to DPTI, include road bridges on arterial roads, traffic control boxes, traffic signal poles, signal boxes, traffic signs, directional and information signs, and other traffic control devices, guide posts, traffic barriers and pedestrian fences located within the road reserve;
- be placed in a location on a pole or fence so as to aid the climbing of the pole or fence;
- be placed so as to restrict the sight distance for road users and pedestrians crossing the road;

- compete with or reduce the effectiveness of other signs and traffic control devices;
- resemble a traffic control device, or reasonably be capable of being mistaken as a traffic control device (must not be affixed on the diagonal); or;
- advertise any organisation other than a registered political party or candidate.

5.1.3 Where signs are fixed or posted on poles adjacent to footpaths or roadways such signs must not be lower than 2 metres and a maximum height of 3 metres from the ground with nothing above the sign to affix it or anything else to the pole. Signs must have a minimum clearance of 3 metres from any overhead mains. There is a total prohibition on any part of the sign being higher than 3 metres from the ground.

5.1.4 Signs on private fences, including those adjoining Council land, shall have a total advertisement area of not more than 2 square metres and be limited to one sign per candidate/party per site/location.

5.1.5 The person or party responsible for the sign must maintain the sign. The person or party is also responsible for ensuring that safety is maintained (and the Australian Road Rules complied with) whilst the sign is being installed, maintained or removed and no traffic disruption is to occur during the installation, maintenance or removal process.

5.1.6 This authority does not cover railway or tramline structures such as level or pedestrian crossings, bridges, stations, signalling equipment or fences adjacent to railway and tram lines. In this regard, information on the various rules and if appropriate, permission to enter or erect signs in these areas must be obtained from the relevant rail authority. In metropolitan Adelaide, this is (*in most instances*) either TransAdelaide or the Australian Rail Track Corporation.

5.1.7 Where properties of Council are managed by others, Council may delegate to the Management Committee of that body the right to determine its own policy for election advertising, subject to relevant legislation. In such cases, written consent of that body is to be obtained. Upon request by the Council, the applicant must produce such written consent.

5.1.8 The person(s) to whom consent is granted and any persons acting on their behalf, accept full responsibility for any personal injury, property damage or other loss in any way arising out of or consequent upon the erection, removal or display of signs and acknowledge(s) that the Council, SA Power Networks or DPTI have no liability or responsibility in relation to such matters whatsoever and such person(s) agree(s) to indemnify Council, SA Power Networks and DPTI against any such personal injury or property damage or other loss incurred by the Council, SA Power Networks or DPTI and against any third party claims arising out of or consequent upon the erection, removal or display of signs.

5.1.9 SA Power Networks may direct the immediate removal of, any signs or remove or cause to be removed any signs without notice from any poles or structures and owned or managed by SA Power Networks notwithstanding that consent to erection of such signs may have been previously given by Council.

5.1.10 If SA Power Networks removes any signs under any condition of these Guidelines, SA Power Networks may dispose of the sign as it sees fit and may recover any costs of removal and/or disposal from the person or party responsible for the signs.

5.1.11 It is a condition to the granting of consent that if any breach occurs which results in action by or on behalf of the Council to enforce the conditions of these Guidelines and thereby results in costs and expenses for the Council, then such costs and expenses may be recovered by the Council from the person(s) responsible. These costs will include removal and/or destruction of the offending material by an officer or agent of the Council.

5.1.12 Should the applicant propose to use property belonging to any party - other than Council, SA Power Networks or DPTI - they must firstly obtain the written consent of that third party. Upon request by the Council, the applicant must produce such written consent. In cases where there is property involved belonging to any other party, Council approval will be subject to all of the relevant matters contained in these Guidelines.

5.1.13 The person or party responsible for the sign must remove all parts of the sign and fixtures from the site within 48 hours from the close of voting in the relevant election.

5.1.14 Installing, maintaining and removing signs must **not** be carried out between 7.00am and 9.00am or between 4.00pm and 6.00pm Monday to Friday on a peak flow traffic lane.

A breach of, or non-compliance with, any of the conditions of these Guidelines will invalidate the consent and may result in a report being prepared for consideration by Council with a view to prosecuting the offender.

6. ILLEGAL SIGNS

Council is totally opposed to illegal signs as a form of advertising.

If advice is received that signs have been affixed that restrict the use of a road, endanger the safety of the public, or have been affixed without Council consent or remain in place after the deadline for removal, the following procedure will be followed by Council staff:

1 The relevant officer will notify the organisation/persons by phone/facsimile, requesting removal of the signs within 24 hours.

2 If the signs are not removed within 24 hours, instructions will be given to immediately remove the offending signs. Council will charge the resultant cost to the parties responsible.

3 If evidence can be obtained of persons affixing the offending sign, this information will be referred to the relevant officer for possible legal proceedings.

7. APPLICATION FOR COUNCIL CONSENT (REMOVED)

8. LEGISLATION

Local Government Act, 1999
 Local Government (Elections) Act 1999
 Development Act 1993
 Electoral Act 1985 (SA)
 Electoral Act (Cwlth)
 Criminal Law Consolidation Act 1935
 Summary Offences Act 1953

The Local Government Association SA Model Guidelines for the Control of Elections Signs reviewed in July 2013 were referred to in the development of this Policy.

9. Availability & Grievances

This policy will be actively promoted within the community and to candidates and political parties. It is available for inspection at the Council office at 11 Bay Street, Port Broughton during ordinary business hours.

It is also available for inspection, download or printing, free of charge, from Council's website www.barungawest.sa.gov.au

Any grievances in relation to this policy or its application should be forwarded in writing addressed to the Chief Executive Officer, District Council of Barunga West, PO Box 3, Port Broughton SA 5522.

10. REVIEW

This Barunga West Policy shall be reviewed by The District Council of Barunga West Council within (4) years of the issued date.

Date	Revision Number	Reason for Amendment
12 th August 2014	01	Policy & Form Adopted by Council
9 th October 2018	02	Removal of Requirement for Council Consent