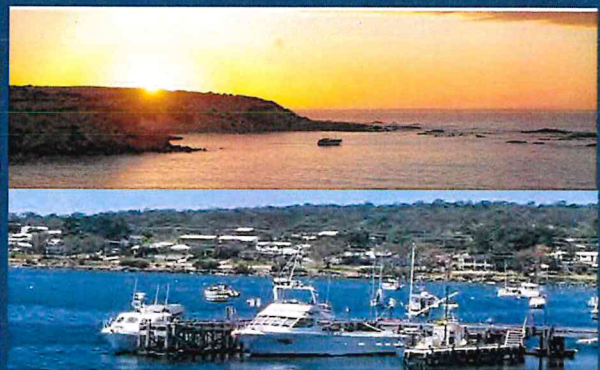
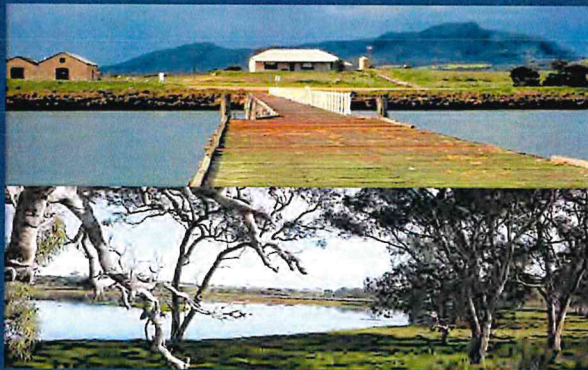



DISTRICT COUNCIL OF LOWER EYRE PENINSULA

Caretaker Period



"Working with our Rural & Coastal Communities"

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| | | Issued: | June 2022 |
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| Responsibility: | Governance |
| Minutes reference: | C930 (1) (a) |
| Applicable Legislation: | Local Government Act 1999 Local Government (Elections) Act 1999 |
| Related Policies/Procedures: | Code of Conduct for Council Members Code of Conduct for Council Employees Staff Values |
| Review Frequency: | Prior to Local Government Elections every four years |

1. INTRODUCTION

It is a 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.

This Caretaker Policy will guide the conduct of the District Council of Lower Eyre Peninsula 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;
- 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 Council continues as efficiently and normally as possible; and
- Council resources are not diverted to, or influenced for, electoral purposes.

2. APPLICATION OF POLICY

2.1 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.

2.2 This policy applies to:

- the Council; and
- Council staff.

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3. PROHIBITION ON DESIGNATED DECISIONS

3.1 Council is prohibited from making a designated decision during an election period. A decision of Council includes a decision of:

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

3.2 A designated decision means a decision:


- 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;
- to terminate the appointment of the Chief Executive Officer;
- 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:
 - 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);
 - 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;
 - relates to the employment of a particular Council employee (other than the Chief Executive Officer);
 - 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
 - relates to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the Council.

4. TREATMENT OF OTHER SIGNIFICANT DECISIONS

4.1 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 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.

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4. TREATMENT OF OTHER SIGNIFICANT DECISIONS

CONT'D:

- 4.3 A **major policy decision** includes any decision, not being a designated decision pursuant to s91A(8) of the Local Government (Elections) Act 1999:
- 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.
- 4.4 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 and make this list available to candidates upon request.
- 4.5 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 Council.
- 4.6 The Chief Executive Officer's report is to assist Council Members assess whether the decision should be deferred for consideration by the incoming Council and will address (where relevant) the following issues:
- 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 and community.
- 4.7 Council will consider the Chief Executive Officer's report and determine whether or not to make the decision.

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5. APPLICATION FOR EXEMPTION

- 5.1 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 1999* and this policy.¹
- 5.2 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 staff will comply with any conditions or limitations that the Minister imposes on the exemption.²

6. EVENTS & FUNCTIONS

- 6.1 Council members can continue to attend events and functions in their capacity as a Council member during an election period provided that their attendance is consistent with the ordinary course of a council member's duties and is not used for campaigning.
- 6.2 Council members should consider whether or not their attendance at an event or function is likely to be viewed as campaigning. In part, this may depend on the conduct of the Council member while in attendance at the event or function. Care should particularly be taken by Council members if they are asked to give a speech at an event or function during an election period.

7. ELECTION PROCESS ENQUIRIES

- 7.1 All election process enquiries from candidates, whether current council members or not, are to be directed to the Electoral Commissioner as the returning officer or, where the matter is outside of the responsibilities of the returning officer, to the Director Corporate Services & Community as the Chief Executive Officer's nominee.

8. MEDIA

- 8.1 Media Releases will be limited to operational issues during the election period. Council will not make comment on individual election campaigns except if inaccurate comments are made by a candidate. In these circumstances, the Chief Executive Officer reserves the right to correct the inaccuracy.
- 8.2 During the election period, no media advice or support will be provided to Council Members who have nominated as candidates, or anyone acting on behalf of the candidate.

(continued):

¹ Section 91A(3) *Local Government (Elections) Act 1999*

² Section 91A(4) *Local Government (Elections) Act 1999*

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8. MEDIA

CONT'D:

- 8.3 During the election period, Council will not respond to publicity or media inquiries involving individual candidates or election issues, unless the publicity pertains to comments specified in Clause 8.1 above.
- 8.4 Council's social media accounts will be used to promote the upcoming election process and it will:
- encourage people to vote, including links to candidate information on the Electoral Commission of South Australia / Local Government Association of South Australia website;
 - avoid publishing photos of current Council Members at any event; and,
 - not promote or link to any Council Member or candidate's social media accounts.
- 8.5 The public's ability to post comments on Council's social media accounts will be disabled for the duration of the election period.
- 8.6 The Mayor and the Chief Executive Officer will continue to be the spokespersons for Council in relation to routine operational issues.

9. PUBLICATIONS

- 9.1 Pursuant to s12(b) of the Local Government (Elections) Act 1999, Council must not publish or distribute, or cause, permit or authorise others to publish or distribute on behalf of Council;
- any advertisement, handbill, pamphlet or notice that contains electoral material during the election period; or
 - any broadcast material that contains electoral material during the election period; or
 - any digital material, including on Council's social media accounts, that contains electoral material during the election period.
- 9.2 Electoral material means any material which is calculated, either intended or likely, to affect voting in an election.
- 9.3 The Annual Report is not bound by this policy to ensure Council complies with regulatory requirements of the Local Government Act 1999 and subordinate legislation.

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10. CONTACT WITH STAFF

- 10.1 The Chief Executive is committed to ensuring Council Members are provided with appropriate support to continue to fulfill their official duties and responsibilities during an election period.
- 10.2 Access to council documents for the purpose of campaigning or to gain an advantage in an election is an improper use of information gained by virtue of the Council member's position as a member of Council. As such, during the election period, Council Members will direct all queries and requests for access to information through the Executive Assistant of Council.

11. COUNCIL RESOURCES

- 11.1 Council resources must not be used in connection with any electioneering activity during the election period.
- 11.2 Any assistance or advice provided by staff to a Current Member or a Council Nominee during the Caretaker Period regarding the Council elections will be recorded and equally provided to all candidates.
- 11.3 The reimbursement of Council Members' out-of-pocket and travel expenses during the election period will only be applicable to costs incurred in the undertaking of normal Council business, and not for expenses that could be perceived as supporting, or being connected with, a candidate's election campaign.
- 11.4 The use of District Council of Lower Eyre Peninsula logos, letterheads, business cards and other corporate branding by candidates, or others acting on behalf of candidates, for electioneering activity, is prohibited.
- 11.5 The use of images taken by Council staff, including those appearing on the Council website and social media platforms, by candidates, or others acting on behalf of candidates, for electioneering activity is prohibited.

12. COUNCIL STAFF ACTIVITIES DURING AN ELECTION PERIOD

- 12.1 Council staff should not undertake any activity that may influence the outcome of an election, except where the activity is required to facilitate the conduct of a fair election process and is authorised by the Chief Executive Officer.
- 12.2 Council staff should not authorise, use or allocate a council resource for any purpose which may influence voting in the election (normal budget work activities are permitted to be undertaken as scheduled).
- 12.3 Council staff must not assist a Council member with the member's campaign during hours of work. Whilst it is not illegal for Council staff to assist a council member with the member's election campaign in their own time, such campaign assistance creates reputational risks for the staff member, the candidate, the Council and for the integrity of the election process.
- 12.4 Where the use of Council resources could be construed as being related to a candidate's election campaign, the incident must be reported to the Chief Executive Officer.

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13. CONTINUING THE FUNCTIONS OF THE COUNCIL DURING THE CARETAKER PERIOD

- 13.1 Other than the restrictions stipulated, nothing in this policy prevents the Mayor, Council Members and staff carrying on the business of the Council during the caretaker period.

14. CONSEQUENCE OF CONTRAVENING THIS POLICY

- 14.1 A designated decision made by Council during an election period is invalid, except where an exemption has been granted by the Minister.³
- 14.2 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

15. 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 District Council of Lower Eyre Peninsula.

Council resources means any asset or service owned or administrated by the District Council of Lower Eyre Peninsula, including property, staff, equipment, vehicles, internet and telecommunications, stationery and hospitality services used in the course of carrying out normal Council business.

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 (Once a public notice declaring the Election Results has been issued by the Electoral Commission of South Australia).

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* (SA).

Minister means the Minister for Local Government or other minister of the South Australian government vested with responsibility for the Local Government (Elections) Act.

Executive Management Team means the Chief Executive Officer, Director Corporate Services & Community, Director Development & Environmental Services and Director Commercial Operations & Infrastructure.

³ Section 91A(5) *Local Government (Elections) Act 1999*

⁴ Section 91A(6) *Local Government (Elections) Act 1999*

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16. AVAILABILITY OF POLICY

- 16.1 This policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website at www.lowyerepeninsula.sa.gov.au and will also be provided to interested members of the public on request, and upon payment of a fee in accordance with Council's schedule of fees and charges.

SIGNED:

CEO

Date: 17 / 06 / 2022

Mayor, DCLEP

Date: 17 / 06 / 2022

| DOCUMENT HISTORY | | |
|------------------|-------------|---|
| Version: | Issue Date: | Description of Change: |
| 2.0 | 20/7/18 | Updated to reflect LGA Model Policy |
| 3.0 | 17/6/22 | Updated to reflect recent LG Reforms and LGA model policy & guidelines. |