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This guideline relates to the Caretaker Policy.

1. INTRODUCTION

The Caretaker period occurs when Council is commencing the Election period and assists in safeguarding the election process and the results of an election on the incoming newly elected Council. Section 91A (2) of the *Local Government Elections Act 1999 (Elections Act)* stipulates that the caretaker policy must at a minimum prohibit the making of certain designated decisions by the Council during an election period.

This Guideline oversees the statutory caretaker period under *Section 91A (the Elections Act) (the Elections Act)* which is the operational section that oversees the Caretaker period.

These guidelines are a supplement to the Caretaker Policy and provide an overview of the scope and meaning of the legislative requirements under section 91A (*the Elections Act*).

These guidelines also examine the difference between decisions by a Council during an election period allowing the use of Council resources for the advantage of a candidate or particular candidate in a general election and the use by a person of Council resources for personal benefit.

2. DEFINITIONS

Terms which are defined in the Caretaker Policy have the same meanings in these guidelines.

3. LEGISLATION

3.1 Overview

Under section 91A (*the Elections Act*), a Council's caretaker policy must at a minimum prohibit the Council from making designated decisions during an election period.

There are three elements to this prohibition:

- a) a decision of the Council; and
- b) made during an election period; and
- c) which is a designated decision.

Each of these elements is described below.


The (*the Elections Act*) stipulates that any designated decision made by a Council during an election period without a ministerial exemption is invalid.

Any person who suffers loss or damage as a result of acting on a designated decision made in contravention of section 91A (1) (6) (*the Elections Act*) is entitled to compensation from the Council for that loss or damage.

3.2 Decision of the Council

Section 91A of the (*the Elections Act*) only applies to a decision of the Council. This will include decisions made directly by the Council or indirectly through a Council committee or delegate. A delegate may be the CEO or the CEO's nominee or another senior member of Council.

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A personal decision of a Council Member, or a Council employee who is not acting under a delegation, is not a decision of a Council and, consequently, cannot be a designated decision for the purposes of section 91A of (*the Elections Act*).

3.3 Election Period

During an election period Council's are prohibited from making designated decisions unless an exemption has been granted by the Minister.

Section 91A of the (*the Elections Act*) prohibits the making of designated decisions during an election period. An election period:

- a) commences on either:
 - i. the day on which nominations for a general election close; or
 - ii. if a Council's caretaker policy specifies an earlier date, that date; and
- b) expires at the conclusion of the general election.


A decision which is made prior to the election period, but announced during the election period, will not be a designated decision for the purposes of section 91A of (*the Elections Act*).

3.4 Designated Decisions

Only specific types of decision will be designated decisions under section 91A (*the Elections Act*). The designated decisions are outlined below:

- 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 or to suspend the Chief Executive Officer for serious and willful misconduct.
- b) A decision to terminate the appointment of the Chief Executive Officer.
- c) A decision 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

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

4. DECISIONS RELATING TO THE EMPLOYMENT OF THE CEO

4.1 Scope of Designated Decision

Certain Council decisions regarding the Chief Executive Officer made during an election period will be designated decisions.

Any decision relating to the employment or remuneration of the Chief Executive Officer, other than a decision to:

- appoint an acting Chief Executive Officer; or
- suspend a Chief Executive Officer for serious and wilful misconduct, will be a designated decision.

5. SPECIFIC CONTRACTING DECISIONS

5.1 Scope of Prohibition

Certain Council decision regarding specific types of contracts made during an election period will be designated decisions.

Generally, 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. However, there are exclusions from this general position provided in section 91A of (*the Elections Act*) and the *Local Government (Elections) Regulations 2010 (the Elections Regulations)*.

5.2 'Prescribed Contracts'


Prescribed contracts are expressly excluded from the types of contracts which are able to be the subject of a designed decision. A 'prescribed contract' is defined in section 91A of (*the Elections Act*) to mean a contract entered into by a Council for the purpose of undertaking road construction, road maintenance or drainage works.

5.3 Exemptions

Other types of contracts are excluded from being the subject of a designated decision by the *Local Government (Elections) Regulations*. These types of decision are decisions:

- Relating to the carrying out of works in response to an emergency or disaster within the meaning of the *Emergency Management Act* or under section 298 of the *Local Government Act*;
- For an expenditure or other decision required to be taken under an agreement by which funding is provided to the Council by the Commonwealth of State Government or otherwise for the Council to be eligible for funding from the Commonwealth or State Government;
- Relating to the employment of a particular Council employee (other than the Chief Executive Officer);

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- d) 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
- e) Relating to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the Council.

6. DECISIONS CONCERNING THE USE OF COUNCIL RESOURCES

6.1 Scope of Designated Decision

A Council's caretaker policy must prohibit the use of council resources for the advantage of a particular candidate or group of candidates during an election period. A caretaker policy may however allow the equal use of resources by all candidates for the election.

The prohibition does not prevent all candidates, including council members utilising council resources that are available to all members of the public.

Examples of this include a candidate using a Council library computer to design election campaign material and produce copies for distribution on a council photocopier (that is available to the general public). Candidates should not be given access to council facilities that are not available to other candidates.

There are constraints on the personal use of Council resources under the Local Government Act and the Code of Conduct for Council member in Part 7 of these guidelines.

Council Resources

'Council resources' is a broad concept which is undefined in *(the Elections Act)*. A general definition of the term 'resources' provided in the Macquarie Dictionary is 'the collective wealth and assets of a country, organisation, individual'. Applying this definition, any asset or information owned or controlled by a Council is a 'Council resource'.

Council resources may include:


- a) materials published by Council;
- b) facilities and goods owned by the Council;
- c) attendance and participation at functions and events;
- d) access to Council information; and
- e) media services.

Council staff and contractors engaged by a Council are also Council resources.

6.2 Meaning of 'Advantage'

The concept of 'advantage' is broad and is defined in the Macquarie Dictionary as 'any state, circumstance, opportunity, or means especially favourable to success, interest, or any desired end'. In the context of section 91A of *(the Elections Act)*, the relevant advantage is in respect of being elected or re-elected.

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An advantage will be conferred where a decision allowing the use of Council resources favours one candidate over another. An advantage arises when a candidate utilises resources, information or support that is not available to a candidate in an election who is not an existing Council Member.

The Ombudsman has given 'advantage' a broad interpretation. The Ombudsman's view is that any activity that gives a perception of favouring one candidate over another is an advantage. Whether the scope of the 'advantage' under section 91A of (*the Elections Act*) extends to a perceived advantage is likely to be a matter for debate. Council should, however, be aware of this view when making decisions during an election period.

6.3 Normal Council Business or Campaigning?

There is no relevant advantage where Council resources are used exclusively for normal Council business during an 'election period' and are not used in connection with a candidate's election campaign.

Where Council Members are standing for re-election, the Council should consider whether a decision to use Council resources made during the election period will provide an advantage to existing Council Members (or other particular candidates) in their election campaigns. Where there will be an advantage then the decision is a designated decision and is prohibited by section 91A of (*the Elections Act*).


Where a decision to use Council resources for the ordinary business of the Council is made during the election period then, provided that no particular candidate or candidates are favoured in their campaigning, this will not be a designated decision.

Reasonable minds are likely to differ over whether the use of Council resources will advantage particular candidates. Due propriety and appropriate judgement should be exercised in making decisions to use Council resources during election periods to ensure that the Council and its Members are not left open to criticism.

Other examples of council resources that, if used during the election period for campaign purposes, or purposes that would otherwise provide a genuine advantage to the candidate, which would contravene a council caretaker policy include:

- (a) Mobile phones.
- (b) Council Vehicles.
- (c) Council-provided landline phones, computers and other office equipment beyond that provided to members of the public (e.g in public library).
- (d) Council- provided business cards.
- (e) Requests to council employees to perform tasks.
- (f) The ability to issue invitations to council events.
- (g) Council travel arrangements (e.g access to council- negotiated rates for flights, accommodation or hire cars).
- (h) Access to areas that members of the public cannot access, including areas within the property of third parties (e.g Mayors Palour' at a suburban football oval).
- (i) Councils printed materials (e.g brochures or other documents).

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It is reasonable for Councils to continue to provide resources where these are necessary for a council member to perform their duties as a council member, provided these resources are not used to advantage a candidate or group of candidates. For example:

- (a) Access to Council facilities, for the purpose of a Council meeting. This may include refreshments, if usually provided as an adjunct to council meetings.
- (b) Access to a secure area of the Council website, where Council agendas, minutes and other council documents can be obtained.

7. USE OF COUNCIL RESOURCES FOR PERSONAL BENEFIT

The use of Council resources for personal benefit is distinct from a designated decision of a Council regarding the use of Council resources for the advantage of a particular candidate or group of candidates.

The use of Council resources for personal benefit is regulated by legislation other than section 91A of (*the Elections Act*). The use of Council resources by a Council Member for the purposes of an election campaign will be a use of those resources for personal benefit. Council Members standing for re-election to Council must take care that they only use Council resources for normal Council business and not to assist them in campaigning.

The general duties on Council Members under section 62 of the *Local Government Act* include offences for improper use of information or position to gain personal advantage for the Council Member or another person. A maximum penalty of \$10,000 or imprisonment for two years applies to these offences.

Section 78 of the Local Government Act 1999 provides for the use of Council resource by Council Members. *Section 78(3) of the Local Government Act 1999* states:

A member of a council must not use a facility or service provided by the council under this section for a purpose unrelated to the performance or discharge of official functions or duties (unless the use has been approved by the council and the member has agreed to reimburse the council for any additional costs or expenses associated with this use).

The Code of Conduct for Council Members also prohibit the use Council resources for private purposes without authorisation.

The use of Council resources for personal benefit in breach of these requirements, could be corruption or misconduct for the purpose of the *Independent Commission Against Corruption Act 2012* (SA) and be the subject of a complaint to the office of Public Integrity (OPI).


Conduct of a public officer that results in a substantial mismanagement of public resources may also be the subject of a complaint to the OPI.

Disciplinary consequences or prosecutions may ultimately result from the unauthorised use of Council resources for private purposes.

8. SPECIFIC COUNCIL RESOURCE SCENARIOS

The business of a Council does not cease during an election period. Council resources will continue to be used during the election period. There is a distinction between the use of Council resources in the ordinary course of Council operations and the use of Council resources by a candidate or group of candidates for campaigning purposes. Where resources are used for campaign purposes, this will be the use of Council resources for personal benefit.

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During an election period, Council Members and Council staff must take care that Council resources are not used for the purpose of election campaigning. Some specific scenarios are discussed below where this issue may arise.

8.1 Council Publications during an 'Election Period'

A decision by a Council to publish information for the advantage of a particular candidate or group of candidates (other than a decision which allows for the equal use of Council resources by all candidates for election) is a designated decision and is prohibited by section 91A of *(the Elections Act)*. Publishing includes publication by any medium, including but not limited to leaflets, newspapers, posters, email, websites, radio or television.

Council has a statutory responsibility to publish certain information regarding general elections. Under section 12(b) of *(the Elections Act)*, each Council is responsible for the provision of information, education and publicity designed to promote public participation in the electoral processes for its area, to inform potential voters about the candidates who are standing for election in its area and to advise its local community about the outcome of the elections and polls conducted in its area.

All election materials published by a Council should fall within the types of material described in section 12(b) of *(the Elections Act)* and not contain any material which would advantage a particular candidate or candidates.


'Electoral material' is defined in *(the Elections Act)* as 'an advertisement, notice, statement or representation calculated to affect the result of an election or poll'. Given that the purpose of electoral material is to persuade voters towards a particular candidate or group of candidates, it will not be appropriate for a Council to publish electoral material.

Council may publish other material during an election period. If Council is considering making a decision during the election period to publish material, the Council should consider whether or not the material would confer an advantage on a particular candidate or group of candidates for election. If an advantage would be conferred then the decision should not be published or distributed.

Where a Council publication made in the ordinary course of Council operations would be published during an election period (and this is not the subject of a Council decision made during the election period), the publication will not contravene section 91A *(the Elections Act)*. A level of care should be taken during the caretaker period, however, as to the contents of these publications to ensure that the Council and Council Members are not criticised for publishing information which may assist Council Members to be re-elected.

Council Members are able to publish electoral material on their own behalf (provided that they comply with sections 27 and 28 of *(the Elections Act)*). Council Members should not assert or imply that the electoral material originates from or is endorsed by the Council. A Council Member also should not use Council resources to create or distribute his or her electoral material, including through the use of Council stationary, computers, printers, photocopiers or staff or the application of the Council's logos.

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8.2 Attendance at Events and Functions

Events and functions can take many forms including conferences, workshops, forums, launches, promotional activities, and social occasions (such as dinners, receptions and balls).

Council Members can continue to attend events and functions during an election period provided that their attendance is consistent with the ordinary course of the Council Member's duties and is not used for campaigning.

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.

8.3 Access to Council Information

Section 61 of the *Local Government Act 1999* provides Council Members with a right to access Council documents in connection with the performance or discharge of the functions or duties of the member. This right of access continues during an election period.

Council Members should take care that access to Council documents is in connection with the performance or discharge of their functions or duties of the member. 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.

Council Members can be prosecuted for the improper use of Council information to gain an advantage for themselves or another person under Section 62 (4) Local Government Act. Maximum penalties of \$10,000 or two years imprisonment apply.

8.4 Media Services

Council's media services should be used to promote Council activities or initiatives or community activities or initiatives which are endorsed or otherwise supported by Council.

Media services should, during the election period, be used in the ordinary course of Council operations. Care should be taken that media services will be used to advantage a particular Council Member in his or her re-election campaign by profiling that member or activities which are closely associated with that member.


Council Members should 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. To do so, would contravene section 62(4) of the *Local Government Act 1999* which prohibits a Council Member improperly using his or her position as a Council member to gain, directly or indirectly, an advantage for himself or herself or for another person. Council Members can be prosecuted for this offence. Maximum penalties of \$10,000 or two years imprisonment apply.

8.5 Public Consultation during an Election Period

Public consultation must be undertaken during an election period if the consultation is mandated by legislation.

Where consultation is discretionary then the consultation can occur during the election period. Consideration should be given prior to the consultation being scheduled as to whether or not

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the consultation will influence the outcome of the election. If the matter subject to the consultation is likely to be closely associated in the minds of voters with a particular candidate or group of candidates then it may be prudent to delay the consultation until after the election period.

8.6 Expenses Incurred by Council Members

Payment or reimbursement of costs relating to Council Members' out-of-pocket expenses incurred during an election period will only apply to necessary costs that have been incurred in the performance of normal Council duties. This is consistent with general requirements applying to the reimbursement of Council Members under section 77 of the *Local Government Act 1999*.

No reimbursements should be provided for campaign expenses or for expenses that could be perceived as supporting or being connected with a candidate's election campaign.

8.7 Council Branding and Stationary

Council should not endorse particular candidates for election. Council logos, letterheads, or other Council branding or Council resources or facilities should not be used for a candidate's election campaign.

8.8 Support Staff to Council Members

Council staff who provide support to Council Members should not be asked to undertake any tasks connected directly or indirectly with an election campaign for a Council Member, except where similar support is provided to all candidates.

8.9 Support Staff to Council Members

Council staff who provide support to council members should not be asked to undertake any tasks connected directly or indirectly with an election campaign for a council member.

In some Councils, Mayors will have access to support staff for assistance with email and diary management and coordination of activities related to the performance of their role. During an election period it is important to ensure clear separation of 'business as usual' (e.g acknowledging or responding to emails received, coordinating calendar appointments) and campaigning activity (e.g preparation and distribution of campaign flyers) and that council staff do not provide any assistance with the latter.


8.10 Equipment and Facilities

Council resources such as Council computers, stationary and business cards can continue to be used by Council Members during an election period for normal Council business. Council resources should not be used for campaign purposes as this will contravene the *Local Government Act 1999* and the Code of Conduct for Council Members (see discussion in Part 7).

9. COUNCIL STAFF ACTIVITIES DURING AN ELECTION PERIOD

Council staff should not undertake any activity that may influence the outcome of an election, except where the activity relates to the election process and is authorised by the Chief Executive Officer.

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Council staff should not authorise, use or allocate a Council resource for any purpose which may influence voting in the election, except where it relates to the election process and is authorised by the Chief Executive Officer. This includes making Council resources available to Council Members for campaign purposes.

Council staff must not assist a Council Member with the members election campaign during the hours of work. Whilst it is not illegal for Council staff to assist a Council member with the members 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.

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.

All Council staff must also comply with the mandatory reporting directions and guidelines issued by the Director of Office Public Integrity under 18B *Independent Commission Against Corruption Act 2012*.

10. EQUITY OF ASSISTANCE TO CANDIDATES

10.1 Candidate Assistance and Advice

Council should not favour a candidate or group of candidates for election, over other candidates.

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

10.2 Election Process Enquiries

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 Chief Executive Officer or his or her nominee.

11. REVIEW

These Guidelines are scheduled for review by Council in July 2026.


12. AVAILABILITY

This Policy is available at Council Website: www.wattlerange.sa.gov.au.

13. REFERENCES & FURTHER READING

References	<ul style="list-style-type: none"> • Caretaker Guidelines 2018, Local Government Association of South Australia
Relevant Legislation:	<ul style="list-style-type: none"> • <i>Emergency Management Act 2004</i> • <i>Independent Commission Against Corruption Act 2012 – 18B</i> • <i>Local Government Act 1999</i> • <i>Local Government (Elections) Act 1999</i> – particularly section 91A • <i>Local Government (Elections) Regulations 2010</i> – particularly regulation 12 • <i>Statutes Amendment (Local Government Review) Act 2021- section 188</i>

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Relevant Policies / Procedures / Guidelines	These Guidelines should be read in conjunction with: <ul style="list-style-type: none"> • Caretaker Policy • Code of Conduct for Council Members • Code of Conduct for Council Employees
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14. ADOPTION & AMENDMENT HISTORY

The table below sets out the adoption, review and amendment history of the policy.

Version No:	Issue Date:	Authorised by:	Description of Change:	Minutes Reference:
1	8 July 2014	Council	Adopted	Folio 5611; Item 12.2.5
2	12 June 2018	Council	Adapted into new format, considered changes to LGA model guidelines	Folio 7653; Item 13.1.2
3	8 March 2022	Council	Adopted changes due to LGA reform.	Folio 9901; Item 15.2.2

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