



City of Salisbury Values: Respectful, Accountable, Collaborative, Helpful

Caretaker Policy

Adopted by:	Council
Responsible Division:	CEO and Governance
First Issued/Adopted:	2011
Last Reviewed:	26 June 2023 (Resolution No. 0389/2023)
Next Review Date:	January 2026

1. Purpose

This policy affirms Council's commitment to fair and democratic elections, and adherence to this principle and includes a commitment to comply with the statutory caretaker period requirements under section 91A of the *Local Government (Elections) Act 1999 (SA)*.

2. Scope

This Policy applies to:

- The Council; Elected Members and
- Council staff

This Policy does not apply to Supplementary elections.

Election Period:

This Policy applies throughout the election period for a general election. The policy commences on the day chosen by the Council for the purposes of this policy, being a date earlier than the close of nominations for the general election and ends when the election results have been certified by the Electoral Commission of South Australia (ECSA).

3. Legislative Requirements

3.1 *Local Government Act 1999*

3.2 *Local Government (Elections) Act 1999*

4. Interpretation/Definitions

Chief Executive Officer means the appointed Chief Executive Officer or Acting Chief Executive Officer or nominee.

Council Member means an elected member of the **City of Salisbury**.

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 means any person who is employed full-time, part-time or casually by the Council who receives remuneration for their work.

Designated decision means a decision:

- (a) relating to the employment or remuneration of the Chief Executive Officer, other than a decision to appoint an acting Chief Executive Officer or to suspend the Chief Executive Officer for serious and wilful misconduct;
- (b) to terminate the appointment of the Chief Executive Officer;

- (c) to enter into a contract, arrangement or understanding (other than a contract for road 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:
- (i) relates to the carrying out of works in response to an emergency or disaster within the meaning of the *Emergency Management Act 2004* (SA), or under section 298 of the *Local Government Act 1999* (SA);
 - (ii) is an expenditure or other decision required to be taken under an agreement by which funding is provided to the Council by the Commonwealth or State Government or otherwise for the Council to be eligible for funding from the Commonwealth or State Government;
 - (iii) relates to the employment of a particular Council employee (other than the Chief Executive Officer);
 - (iv) is made in the conduct of negotiations relating to the employment of Council employees generally, or a class of Council employees, if provision has been made for funds relating to such negotiations in the budget of the Council for the relevant financial year and the negotiations commenced prior to the election period; or
 - (v) relates to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the Council;
- or

Election period means the period commencing on the day of the close of nominations for a general election and expiring when the election results have been certified by ECSA.

General election means a general election of council members held:

- (a) under section 5 of the *Local Government (Elections) Act 1999*; 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 1999*.

5. Policy Statements

5.1 PROHIBITION ON DESIGNATED DECISIONS

5.1.1 The Council is prohibited from making a designated decision during an election period.

5.1.2 A decision of the Council includes a decision of:

- A Committee of Council; and
- A delegate of Council.

5.2 PROHIBITION ON THE USE OF COUNCIL RESOURCES

5.2.1 Council resources must not be used for the advantage of a particular candidate or group of candidates.

5.2.2 For clarity, neither the *Local Government (Elections) Act 1999* nor this Caretaker Policy prohibits Council providing resources to all members of the public which incidentally includes all candidates for election.

5.2.3 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 ordinary 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 (eg in a 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 (eg 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 properties of third parties (eg a 'Mayor's Parlour' at a suburban football oval);
- Council produced promotional brochures and documents.

5.2.4 Despite Clause 3 above, Council may determine those Council resources that may be used by all candidates for election on an equal basis.

5.2.5 The use of existing Councillor position title is allowed however, Elected Members will not use their position as an elected representative to gain media attention or support of their election campaign.

5.3 APPLICATION FOR EXEMPTION

5.3.1 Pursuant to section 91A(3) of the *Local Government (Elections) Act 1999*, 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.

5.3.2 Pursuant to section 91A(4) of the *Local Government (Elections) Act 1999*, 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 and this policy, then the Council and Council staff will comply with any conditions or limitations that the Minister imposes on the exemption.

5.4 TREATMENT OF OTHER SIGNIFICANT DECISIONS

5.4.1 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.

5.4.2 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.

5.4.3 A 'major policy' decision includes any decision (not being a designated decision):

- to spend unbudgeted monies;
- to conduct unplanned public consultation;
- to adopt 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.

5.4.4 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 and make this list available to candidates upon request.

5.4.5 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 the Council.

5.4.6 The aim of the Chief Executive Officer's report is to assist Council Members to assess whether the decision should be deferred for consideration by the incoming Council.

5.4.7 The Chief Executive Officer's report to Council will address the following issues (where relevant):

- 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 approved 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 area and community.

5.4.8 Council will consider the Chief Executive Officer's report and determine whether or not to make the decision.

5.5 CONTINUING THE FUNCTIONS OF THE COUNCIL DURING THE CARETAKER PERIOD

5.5.1 Nothing in this policy prevents the Mayor, Council Members and staff carrying on the business of the Council during the caretaker period. The Mayor will continue to accept invitations to attend community functions, as will Council Members, particularly when those functions are in recognition of activities of community groups whether having gained the support of the Council through grants or not.

5.5.2 The CEO will ensure as far as is practical that Council initiatives will not be launched during the caretaker period.

5.5.3 The adopted Media Policy will continue to apply in relation to Council spokespersons during the Caretaker period.

5.6 CONSEQUENCES OF CONTRAVENING THIS POLICY

5.6.1 Pursuant to section 91(A)(5) of the *Local Government Elections Act 1999*, a designated decision made by Council during an election period is invalid, except where an exemption has been granted by the Minister.

5.6.2 Pursuant to section 91(A)(6) of the *Local Government Elections Act 1999*, 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.

5.6.3 Disciplinary consequences or prosecutions may result for a breach of this Policy or the *Local Government Elections Act 1999*.

6. Complaint handling during Caretaker period

Any breach of this policy in relation to staff conduct will be referred to the Chief Executive Officer.

Any complaints against an Elected Member who is also a candidate for re-election in relation to Behavioural Standards for Council Members will not be determined by Council during the Caretaker period.

The Chief Executive Officer, upon receiving a complaint against an Elected Member who is also a candidate for re-election in relation to their conduct in relation to this Policy, will assess and investigate in accordance with the process outlined in the Behavioural Management Policy.

Complaints in relation to Behavioural Standards during the Caretaker period will be referred to the relevant agency depending on the nature of the complaint.

The Electoral Commissioner investigates any breach of the *Local Government (Election) Act 1999*.

7. Related Policies and Procedures

7.1 Behavioural Management Policy

8. Approval and Change History

Version	Approval Date	Approval By	Change
4	28 February 2022	Council	Various changes as a result of LG reform
5	June 2023	Council	Legislative review and updated to reflect changes

9. Availability

8.1 The Policy is available to be downloaded, free of charge, from Council's website www.salisbury.sa.gov.au

8.2 The Policy will be available for inspection without charge at the Civic Centre during ordinary business hours and a copy may be purchased at a fee as set annually by Council.

City of Salisbury Community Hub
34 Church Street, Salisbury SA 5108
Telephone: 8406 8222
Email: city@salisbury.sa.gov.au

9. Review

This Policy will be reviewed to align with an upcoming election.

Further Information

For further information on this Policy please contact:

Responsible Officer: Manager Governance

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