

# POLICY

<b>Policy Name</b>	Caretaker Policy
<b>Policy Category</b>	Governance
<b>Department / Officer</b>	Office of Chief Executive Officer/Chief Executive Officer
<b>Date Adopted</b>	21 June 2010
<b>Date/s Reviewed</b>	28 July 2014, 25 June 2018, 28 March 2022
<b>Review Frequency</b>	Within six months of a General Election
<b>Strategic Plan Reference</b>	Aspiration 6 – We are a financially sustainable and well-governed organisation
<b>Attachments</b>	Nil

## 1. Purpose

The purpose of this Policy is to set out the parameters that Council will operate within during the Caretaker period.

## 2. Scope

This Policy applies throughout the Election Period for general elections. For the purposes of the Local Government Election of November 2022, the policy commences on 6 September 2022 and ends at the conclusion of the election, when results have been declared.

The policy applies to Council Members and Council Employees.

## 3. Policy Statement (Summary)

The City of Victor Harbor is committed to fair and democratic elections and this policy ensures Council is meeting its Statutory obligations under Section 91A of the *Local Government (Elections) Act 1999*.

## 4. Legislation and Compliance

- Local Government (Elections) Act 1999
- Local Government (Elections) Regulations 2010
- Local Government (Elections) (Miscellaneous) Amendment Act 2009
- Local Government Act 1999
- Independent Commissioner Against Corruption Act 2012

## 5. Definitions

**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*

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

**Conclusion of the General Election** means when the last result of the periodic elections is certified by the returning officer under the *Local Government (Elections) Act 1999*.

**Council Employees** means any person that is employed full-time, part-time or casually, volunteers and external contractors by the Council who receives remuneration for their work.

**Council Member** means an Elected Member of the City of Victor Harbor.

**Council Resources** means any asset or service owned or administered by the City of Victor Harbor including property, staff, equipment, vehicles, internet and telecommunications, stationery and hospitality services, used in the course of carrying out normal Council business.

**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 willful 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 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 **(\$242,861)** 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*, or under Section 298 of the *Local Government Act 1999*;
  - 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;
- v. relates to a Community Wastewater Management Systems scheme that has, prior to the Election Period, been approved by the Council;

**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.

**Events and Functions** means gatherings involving 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.

**Major Policy** decision includes any decision (not being a Designated Decision):

- a) to spend unbudgeted monies;
- b) to conduct unplanned public consultation;
- c) to endorse a new policy;
- d) to dispose of Council land;
- e) to approve community grants;
- f) to progress any matter which has been identified as an election issue; and
- g) any other issue that is considered a major policy decision by the Chief Executive Officer.

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

**Prescribed Contract** means a contract entered into by a Council for the purpose of undertaking road construction or maintenance or drainage works.

**Senior Management Team** means the Chief Executive Officer, Director Community and Development, Director Environment and Infrastructure, Director Corporate and Customer Service and Group Manager Governance and Finance

**Significant Decision** means any major policy or other decision which will significantly affect the Council area or community or will bind the incoming Council.

## 6. Policy Content

### 6.1 Prohibition on Designated Decisions

Council is prohibited from making a Designated Decision during an Election Period. This includes decisions made directly by the Council at a meeting or indirectly through a committee of Council or other delegate or sub-delegate of Council.

The Chief Executive Officer must ensure that Designated Decisions are not scheduled for consideration during the Election Period.

## 6.2 Treatment of Significant Decision

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.

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.

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

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 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 area and community.

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

### 6.2.1 Role of the Chief Executive Officer

The determination as to whether a major policy or any other decision is significant will be made by the Chief Executive Officer, after consultation with the Mayor or Chairperson (as relevant).

The Chief Executive Officer must keep a record of all such determinations made and make this list available to candidates upon request.

## 6.3 Application for Exemption

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.

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 employees will comply with any conditions or limitations that the Minister imposes on the exemption.

#### **6.4 Consequence of contravening this Policy**

A Designated Decision made by Council during an Election Period is invalid, except where an exemption has been granted by the Minister<sup>1</sup>.

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<sup>2</sup>.

#### **6.5 Use of Council Resources**

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

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 and may include (but not limited to):

- Mobile Phones
- Council Vehicles
- Council provided 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
- Access to areas that members of the public cannot access, including areas within the property of their parties
- Councils produced promotional brochures and documents

##### **6.5.1 Correspondence**

All correspondence addressed to Council Members will be answered by the Chief Executive Officer during the Election Period.

<sup>1</sup> Section 91A(5) of the *Local Government (Elections) Act 1999*

<sup>2</sup> Section 91A(6) of the *Local Government (Elections) Act 1999*

### **6.5.2 Expenses incurred by Council Members**

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, their election campaign as a candidate

### **6.5.3 Council Branding and Stationery**

The use of City of Victor Harbor's logos, letterheads and other Council branding or Council resources or facilities shall not be used for, or linked in any way with, a candidate's election campaign.

The use of images taken by Council employees, including those appearing on the Council website and social media platforms, by candidates, or other acting on behalf of candidates, shall not be used during the Election Period.

### **6.5.4 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 facilities and/or services (such as mobile phones, computers, etc) and it is impractical to discontinue their use during an Election Period, Council Members must not use those facilities for any purpose associated with an election campaign.

## **6.6 Contact with Council Employees**

The Chief Executive Officer is committed to ensuring Council Members are provided with the appropriate support to continue to fulfill their official duties and responsibilities during an Election Period.

During the Election Period, Council Members will direct all queries, requests and access to information through the Senior Management Team.

## **6.7 Media**

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

### **6.7.1 Media Advice**

Any request for media advice or assistance from a Council Member 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

### **6.7.2 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 be the nominated person unless otherwise determined by the Chief Executive Officer.

### **6.7.3 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.

### **6.7.4 Council Members**

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

### **6.7.5 Council Employees**

During an Election Period, Council employees must not make any public statement that relates to an election issue/s unless such statements have been approved by the Chief Executive Officer.

### **6.7.6 Council's Social Media**

Social media will be used only for Council's ordinary business and will not be used for electoral material except for information about the conduct and processes of the election.

Council's Social Media platforms will be monitored during the election period and any candidate electoral material will be removed at the discretion of the Chief Executive Officer or authorised delegate.

## **6.8 Attendance at Events and Functions during an Election Period**

Council Members may 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 the Council Member's Duties.

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.

### **6.8.1 Speeches or Keynotes 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 unless prior approval is given by the Chief Executive Officer.

### **6.8.2 Publication of promotional material**

Council has a statutory obligation to publish certain information regarding the general elections in accordance with Section 12(b) of the *Local Government (Elections) Act 1999*.

Council may publish other material during an Election Period, the promotional material must not confer an advantage on a particular candidate or group of candidates for election.

## **6.9 Public Consultation during an Election Period**

Public Consultation must be undertaken during an Election Period if the consultation is a requirement by legislation.

### **6.9.1 Prohibition**

This Policy prohibits the conduct of discretionary public consultation during the Election Period.

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

### **6.9.2 Approval for public consultation**

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 it is necessary for the performance of functions as set out in Clause 6.4.



### **6.9.3 Community Meetings**

Community meetings will not be held during an Election Period.

### **6.10 Access to Council Information**

Section 61 of the *Local Government Act 1999* provides Council Members with a statutory right to access council documents in connection with the performance or discharge of the functions or duties as a Council Member. This right to access continues during an Election Period but 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 accessed that is not publicly available must not be used for election purposes.

All candidates (including those that are Council Members) 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 employees that might be perceived to support an election campaign, and there shall be transparency in the provision of all information and advice during an Election Period.

### **6.11 Equity in Assistance to Candidates**

All candidates for the Council election will be treated equally.

#### **6.11.1 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.

#### **6.11.2 Election Process Enquiries**

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

### **6.12 Handling of Code of Conduct Complaints during an Election Period**

Complaints against a Council Member during an Election Period will be managed in accordance with Councils Complaints Handling Procedure under the Code of Conduct for Council Members.

Council recognises that the Electoral Commission has the role of investigating any alleged breach of the *Local Government (Elections) Act 1999*, including alleged illegal practices.

## **7. Risk Management**

The adoption of this Policy will assist Council to mitigate legal, governance, public relations and compliance risks.

## **8. Implementation/Delegations**

The Chief Executive Officer is the delegated authority to implement this Policy.

## **9. Related Documents**

- Code of Conduct for Council Members
- Code of Conduct for Council Employees
- Complaints Handling Procedure under the Code of Conduct for Council Members

## **10. Availability of Policy**

This policy is available on Council's website at [www.victor.sa.gov.au](http://www.victor.sa.gov.au). It may also be purchased at the Principal Office of the Council at 1 Bay Road, Victor Harbor.