

# POLICY 2.22

## GOVERNANCE

### Caretaker Period



Version: 3 | Next Review: June 2022

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#### 1. POLICY STATEMENT

This policy implements the statutory caretaker period requirements under section 91A of the *Local Government (Elections) Act 1999 (SA)*.

#### 2. 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 Tumby Bay**.

**Election period** means the period:

- (a) commencing on 14 September 2018, being a day chosen by the Council for the purposes of the Policy, being a date earlier than the close of nominations for the general election; and
- (b) expiring at the conclusion of the general election.

**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 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);

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- (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
- (d) allowing the use of Council resources for the advantage of a particular candidate or group of candidates (other than a decision that allows the equal use of Council resources by all candidates).

**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.

### 3. TREATMENT OF OTHER SIGNIFICANT DECISIONS

- 3.1. 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:
  - 3.1.1. are considered by Council prior to the 'election period'; or
  - 3.1.2. are scheduled for determination by the incoming Council.
- 3.2. 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.
- 3.3. A 'major policy' decision includes any decision (not being a designated decision):
  - 3.3.1. to spend unbudgeted monies;
  - 3.3.2. to conduct unplanned public consultation;
  - 3.3.3. to endorse a new policy;
  - 3.3.4. to dispose of Council land;
  - 3.3.5. to approve community grants;
  - 3.3.6. to progress any matter which has been identified as an election issue; and
  - 3.3.7. any other issue that is considered a major policy decision by the Chief Executive Officer.
- 3.4. The determination as to whether or not any decision is significant will be made by the Chief Executive Officer, after consultation with the Mayor.
- 3.5. 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

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Chief Executive Officer will report this to the Council.

- 3.6. 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.
- 3.7. The Chief Executive Officer's report to Council will address the following issues (where relevant):
  - 3.7.1. why the matter is considered 'significant';
  - 3.7.2. why the matter is considered urgent;
  - 3.7.3. what are the financial and other consequences of postponing the matter until after the election, both on the current Council and the incoming Council;
  - 3.7.4. whether deciding the matter will significantly limit options for the incoming Council;
  - 3.7.5. whether the matter requires the expenditure of unbudgeted funds;
  - 3.7.6. whether the matter is the completion of an activity already commenced and previously endorsed by Council;
  - 3.7.7. whether the matter requires community engagement;
  - 3.7.8. any relevant statutory obligations or timeframes; and
  - 3.7.9. whether dealing with the matter in the election period is in the best interests of the Council area and community.
- 3.8. Council will consider the Chief Executive Officer's report and determine whether or not to make the decision.

#### **4. APPLICATION OF POLICY**

- 4.1. This policy applies throughout the election period for a general election. For the purposes of the Local Government Elections of November 2018 the policy commences on 14 September 2018 and ends at the conclusion of the election, when results have been declared.
- 4.2. This policy applies to:
  - 4.2.1. the Council; and
  - 4.2.2. Council staff.
- 4.3. This policy is to be taken to form part of the *Code of Conduct for Council Employees* gazetted for the purpose of section 110 of the Local Government Act.

#### **5. PROHIBITION ON DESIGNATED DECISIONS**

- 5.1. The Council is prohibited from making a designated decision during an election period.
- 5.2. A decision of the Council includes a decision of:

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5.2.1. a committee of Council; and

5.2.2. a delegate of Council.

## **6. CONSEQUENCE OF CONTRAVENING THIS POLICY**

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

6.2. 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.

## **7. APPLICATION FOR EXEMPTION**

7.1. 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 and this policy.

7.2. 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 and this policy, then the Council and Council staff will comply with any conditions or limitations that the Minister imposes on the exemption.

## **8. CONTINUING THE FUNCTIONS OF THE COUNCIL DURING THE CARETAKER PERIOD**

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.

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

The Mayor/ will continue to be Council's spokesperson in the media or at other official functions.

## **9. COUNCIL ENDORSEMENT**

This Policy was adopted by resolution of the Council on 10 April 2018.

## **10. REVIEW AND EVALUATION**

This Policy is scheduled for review by Council before September 2022.

## **11. AVAILABILITY OF POLICY**

This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website [www.tumbybay.sa.gov.au](http://www.tumbybay.sa.gov.au). Copies will also be provided to interested members of the community upon request, and upon payment of a fee in accordance with Council's schedule of fees and charges.

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**Strategic Link:**  
**Delegation:**

**Documentation:**

<sup>1</sup> Section 91A(1) of the *Local Government (Elections) Act 1999* states that the caretaker policy applies during the 'election period' for a 'general election'. General elections are defined in the *Local Government Act 1999* to mean a periodic election held under section 5 of the *Local Government (Elections) Act 1999*, or an election pursuant to a proclamation or notice under the *Local Government Act 1999*. [In the case of an election pursuant to a notice under section 56 of the *Local Government Act 1999*, the specific provisions of section 57 will apply.]  
The Policy does not apply to supplementary elections.

**Authority:** Adopted by Council: 12/08/14 {Motion No 8c/82014}  
Reviewed by Council 10/11/2015 {Motion 7c/112015}  
Reviewed by Council 10/04/2018/ {Motion 3c/042018}



SIGNED: .....  
Responsible Officer

Date: 10 / 04 / 2018

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