



Caretaker Policy

Responsible Officer	Chief Executive Officer
Relevant Delegations	Director Corporate Services
Legislation and References	Local Government Act 1999 Local Government (Elections) Act 1999

1 Introduction

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

Council Member means an elected member of Clare & Gilbert Valleys 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.

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 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

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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

(d)).

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 Application of Policy

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.

This policy applies to:

- Council Members;
- Council Employee;
- A delegate of Council and
- Committee of Council

4 Designated Decisions Prohibited by the Local Government (Elections) Act 1999.

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Under Section 91A of the Local Government (Elections) Act 1999, Council is prohibited from making a designated decision during an election period.

Council notes that the Local Government (Elections) Act 1999 stipulates that any designated decision made by Council during the “election period” without an exemption from the Minister is invalid. Furthermore, it also notes that Council could be liable for compensation to any person who suffers loss or damage as a result of acting in good faith in reliance on such an invalid designated decision.

Council, if faced with extraordinary circumstances, may apply in writing to the Minister for an exemption, Council further notes that if the Minister chooses to grant an exemption it must comply with any conditions or limitations that the Minister considers appropriate.

The Chief Executive Officer must ensure that ‘designated decisions’ are not scheduled for consideration during the ‘election period’.

This Policy applies to actual decisions made during an ‘election period’, not the announcement of decisions made prior to the ‘election period.’

5 Prohibition on the use of Council Resources

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

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

6 Treatment of other Significant Decisions

So far as is reasonably practicable, the Chief Executive Officer must avoid scheduling significant decisions (including major policy decisions) for consideration during an ‘election period’ and instead ensure that such decisions:

- are considered by Council prior to the ‘election period’; or
- are scheduled for determination by the incoming Council.

A ‘significant decision’ is any major policy or other decision which will significantly affect the Council area or community or will inappropriately bind the incoming Council.

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

- to spend unbudgeted monies;
- to conduct unplanned public consultation;
- to endorse a new policy or significantly change an existing policy unless required by legislation;
- 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.

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

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 must report this to Council. Council will consider the decision and determine whether to make the decision or to defer it 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.

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7 Continuing the Functions of Council during the Caretaker Period

Nothing in this Policy prevents the Mayor, Council Members and employees 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 support of the Council through grants or not.

The Chief Executive Officer will ensure 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.

8 Review & Availability

This policy will be reviewed prior to the 2026 general election (four years) or as required.

The policy is available on Council's website www.claregilbertvalleys.sa.gov.au

9 References

Local Government (Elections) Act 1999
Local Government Act 1999

10 Document History

Approved by	Issue Date	Minute Reference – Details of Review
CGVC	17/05/10	MB188/10
CGVC	19/08/13	Minor Review by Council
CGVC	16/11/15	Minor Review by Council
CGVC	16/04/18	122-18 Adopted by Council pre November 2018 Election
CGVC	02/05/22	Reviewed and adopted by Council pre November 2022 Election

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