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Council File Reference:	Council Policies (P)
Applicable Legislation:	Section 91A of the Local Government (Elections) Act 1999
Relevant Policies:	Code of Conduct Elected Members and Committee Members;
Related Procedures:	Not subject to Public Consultation
Delegations:	Berri Barmera Council Delegations Register

Purpose / Introduction

Section 91A of the *Local Government (Elections) Act 1999* (the Elections Act) requires councils to prepare and adopt a caretaker policy to govern the conduct of the council and its staff during the election period for a general election.

On 10 November 2021, section 88 of the *Statutes Amendment (Local Government Review) Act 2021* (the Amendment Act) commenced, which amended section 91A – Conduct of council during election period of the Elections Act.

Section 91A(2) of the Elections Act stipulates that the caretaker policy must at a minimum:

- a. Prohibit the making of a designated decision; and
- b. Prohibit the use of council resources for the advantage of a particular candidate or group of candidates,
- c. During an election period.

Principles

It is a democratic principle that outgoing elected bodies should not use public resources for election campaigning, nor make decisions which may unreasonably, inappropriately, or unnecessarily bind an incoming Council.

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

Objectives

This Policy applies to:

- each periodic election of members of the Council under the *Local Government (Elections) Act 1999*; and
- each general election of members of the Council held pursuant to a proclamation or notice under the *Local Government Act 1999*.

This Policy does not apply to:

- supplementary elections.

In this Policy:

- All references to 'Council Members' should be read as including the Mayor and the Deputy Mayor of the Berri Barmera Council and
- All references to the Chief Executive Officer should be read as including an Acting Chief Executive Officer and his/her delegate.

Policy Outline

This Policy applies during an '*election period*' of Council to cover:

- (a) designated decisions as defined in the *Local Government (Elections) Act 1999* that are made by Council; and
- (b) use of Council resources, including:
 - materials published by Council;
 - facilities and goods owned by the council;
 - attendance and participation at functions and events;
 - access to Council information;
 - media services issues; and
 - responsibilities of Employees of Council; (*Employees of Council and contractors engaged by a council are also council resources*).

'ELECTION PERIOD'

During an 'election period', Council must assume a '*Caretaker mode*', which means that it:

- must avoid designated decisions which are prohibited by section 91A of the *Local Government (Elections) Act 1999*;

An '*election period*':

- (a) **commences** on the day of the close of nominations for the election (6 September 2022); and
- (b) **terminates** at the 'conclusion of the election' (as defined at Section 4(2) of the *Local Government Act 1999*) for the relevant periodic or general election being the time at which the last result of the election is certified by the returning officer.

Section 91A of the Elections Act does not apply to a decision that is announced during the election period but was made prior to the election period.

1 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.]

PURPOSE

During a Local Government 'election period', Council will assume a 'Caretaker mode', and will avoid actions and decisions which could be perceived as intended to affect the results of an election or otherwise to have a significant impact on or unnecessarily bind the incoming Council.

The purpose of this Policy is to clearly set the parameters that Council will operate within during a Caretaker period. Caretaker provisions are required pursuant to section 91A of the *Local Government (Elections) Act 1999* and are generally regarded as necessary for the promotion of transparent and accountable government during an 'election period'.

SIGNIFICANT DECISIONS

Scope

This clause applies to decisions of Council, a committee of Council, or a delegate of Council, including the Chief Executive Officer.

- ***Designated decisions' prohibited by the Local Government (Elections) Act 1999***

The following table outlines those decisions which are expressly prohibited by section 91A of the *Local Government (Elections) Act 1999*.

Designated Decisions	
(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 suspend a Chief Executive Officer for serious and wilful misconduct) other than a decision of a kind excluded from the definition of "designated decision" by regulation.
(b)	A decision to terminate the appointment of the Chief Executive Officer
(c)	<p>A decision to enter into a contract, arrangement or understanding (other than a contract for road construction, road maintenance and 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, other than a decision of a kind excluded from the definition of "designated decision" by regulation.</p> <p>A "prescribed contract" means a contract entered into by the Council for the purpose of undertaking road construction or road maintenance or drainage works.</p>
(d)	A decision 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 for election), other than a decision of a kind excluded from the definition of "designated decision" by regulation.

Council notes that the *Local Government (Elections) Act 1999* stipulates that any designated decision made by the Council during the 'election period' without an exemption from the Minister is invalid. Furthermore, it also notes that the Council is liable to pay 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.

A breach of this policy is a breach of the Code of Conduct for Council Members.

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 may be subject to any conditions or limitations that the Minister considers appropriate.

- **Exemptions to 'Designated decisions' under the Local Government (Elections) Regulations 2010**

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

- 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*; or
- for 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; or
- relating to the employment of a particular council employee (other than the chief executive officer); or
- 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
- relating to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the council; or

- **Decisions made prior to an 'election period'**

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

- **Other significant decisions which are prohibited by operation of this Policy**

Prohibited Decision	Notes
Any major policy or other decisions which will significantly affect the Council area or community or will inappropriately bind the incoming Council	This is an internal requirement of Council

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, instead, ensure that such decisions:

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

In the context of this policy, a 'major policy' decision includes any decision:

- to spend unbudgeted monies;
- to conduct unplanned public consultation;
- to endorse 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 CEO that is not a 'designated decision'.

- ***Role of 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/Chairperson.

Considerations for urgent decisions

Where the Chief Executive Officer has determined that a decision is a major policy decision or is otherwise significant and circumstances arise that require the decision to be made during the election period, the Council will consider the matter and determine whether to make the decision.

The report to Council will address the following issues, where relevant:

- (a) Why the matter is considered 'significant';
- (b) Why the matter is considered urgent;
- (c) What are the financial and other consequences of postponing the matter until after the election, both on the current Council and the incoming Council;
- (d) Whether deciding the matter will significantly limit the options for the incoming Council;
- (e) Whether the matter requires the expenditure of unbudgeted funds;
- (f) Whether the matter is the completion of an activity already commenced and previously endorsed by Council;
- (g) Whether the matter requires community engagement;
- (h) Any relevant statutory obligations or timeframes; and
- (i) Whether dealing with the matter in the 'election period' is in the best interests of the Council area and community.

The aim of the report is to assist Council Members assess whether the decision should be deferred as a decision for the incoming Council.

USE OF COUNCIL RESOURCES

Council notes that Section 91A(8)(d) of the *Local Government (Elections) Act 1999* requires Council to prohibit the use of Council resources for the advantage of a particular candidate or group of candidates. This includes a candidate or candidates who are currently elected Members of the Council.

Council resources cover a wide range of personnel, goods, services, information and opportunities and may include:

- materials published by Council;
- facilities and goods owned by the Council;
- attendance and participation at functions and events;
- access to Council information; and
- media services issues.

Employees of Council and Contractors engaged by a Council are also Council resources.

Council Members and staff will ensure that due propriety is observed in the use of Council resources and must exercise appropriate judgement in this regard.

Council resources, including officers, support staff, hospitality services, equipment and stationery must be used exclusively for normal Council business during an 'election period' and, must not be used in connection with an election other than uses strictly relating to the election process.

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 property of third parties (eg a 'Mayor's Parlour' at a suburban football oval)
- Council's produced promotional brochures and documents

(1) Council Publications During an 'Election Period'

- **Prohibition on publishing certain materials during an 'election period'**

Subject to the operation of Section 12(b) of the *Local Government (Elections) Act 1999*

Council must not:

- (a) print, publish or distribute; or
- (b) cause, permit or authorise others to print, publish or distribute on behalf of Council, any advertisement, handbill, pamphlet or notice that contains 'electoral material' during an 'election period'.

For the purposes of this Policy 'electoral material' means material which is calculated (i.e. intended or likely) to affect the result of an election. However, it does not include any materials produced by Council relating to the election process by way of information, education or publicity, or materials produced by or on behalf of the returning officer for the purposes of conducting an election.

This Policy does not prevent publications by Council which merely announce the holding of an election or relate only to the election process itself for the purposes of Section 12(b) of the *Local Government (Elections) Act 1999* or otherwise. Council may provide information, education and publicity designed to promote public participation in the electoral processes for its area, and to inform potential voters about the candidates who are standing for election in its area. It will not publish material that refers to, or comments on, an issue submitted to or is otherwise before voters in connection with the election.

Council Members are, however, permitted to publish campaign material on their own behalf, but cannot assert for that material to be originating from, or authorised by, Council (eg by the use of Council logos).

NOTE: 'Publication' means any type of publication, including but not limited to leaflets, newspapers, posters, email, website, radio etc.

- **Council website**

During an 'election period', new material which is prohibited by this Policy will not be placed on the Council website. Any information which refers to the election will only relate to the election process by way of information, education or publicity. Information about Council Members will be restricted to names, contact details, titles, membership of committees and other bodies to which they have been appointed by the Council.

The Council's website will include an express link or reference to the Local Government Association publication of candidate profiles and electoral statements for the purposes of section 19A of the *Local Government (Elections) Act 1999*.

- **Other Council publications**

Insofar as any Council publications, such as the Annual Report, are required to be published during an 'election period', the content contained within them regarding Council Members will be restricted to that strictly required by the *Local Government Act 1999* and Regulations.

Council publications produced before an 'election period' containing material which might be construed as electoral material will not be circulated or displayed during the 'election period'. However, they may be made available to members of the public on request.

Councils may publish other material during an election period. If council is considering publishing or distributing material during the election period, 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 Material should not be published or distributed.

(2) Attendance at Events and Functions During an 'Election Period'

In this clause, reference to 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.

- **Events staged by external bodies**

Council Members may continue to attend events and functions staged by external bodies during an 'election period'. This includes, but is not limited to conferences, workshops, forums, launches, promotional activities and social occasions and LGA and regional LGA meetings, including the LGA Annual General Meeting held in October.

- **Council events and functions**

Council organised events and functions held during the 'election period' will be reduced to only those essential to the operation of the Council.

- **Addresses by Council Members**

Council Members must not give speeches or keynote addresses at Council organised or sponsored events and functions during an 'election period'.

Council Members may, however, make short welcome speeches at Council organised or sponsored events and functions during an 'election period'.

- **Publication of promotional material**

In preparing any material concerning a Council organised or sponsored function or event which will be published or distributed during the 'election period', such preparation will be consistent with the Publications section of this policy.

(3) Access to Council Information

Council Members continue during an 'election period' to have a statutory right to access Council information relevant to the performance of their functions as a Council Member. This right 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 so 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 employees of Council 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'.

- **Information and briefing material**

Information and briefing material prepared or secured by staff for a Council Member during an 'election period' must be necessary to the carrying out of the Council Member's role and, where appropriate, provided to any candidate seeking the same information. Queries by staff regarding the provision of information will be directed to the Chief Executive Officer in the first instance.

(4) Media Service

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

- **Media advice**

Any request for media advice or assistance from Council Members 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.

- **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 generally be the appropriate person.

- **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.

- **Council Members**

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

- **Council employees**

During an 'election period', no Council employee may make any public statement that relates to an election issue unless such statements have been approved by the Chief Executive Officer.

(5) Employees of Council Responsibilities During and Election Period

Prior to any election period, the Chief Executive Officer will ensure that all employees of Council are advised in relation to the application of this Caretaker Policy.

- **Correspondence**

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

- **Activities that may affect voting**

- (a) Employees of Council must not undertake an activity that may affect voting in the election, except where the activity relates to the election process and is authorised by the Chief Executive Officer;
- (b) Employees of Council must not authorise, use or allocate a Council resource for any purpose which may influence voting in the election, except where it only relates to the election process and is authorised by the Chief Executive Officer; and
- (c) Employees of Council must not assist a council member with the member's election campaign during hours of work. Whilst it is not illegal for employees of Council to assist a council member with the member's 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.

(6) Equity in Assistance to Candidates

Council confirms that all candidates for the Council election will be treated equally.

- **Candidate assistance and advice**

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

- **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 returns officer or, where the matter is outside of the responsibilities of the Returning Officer, to the Chief Executive Officer or his/her nominee.

- **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. No reimbursements will be provided for campaigning, or for expenses that could be perceived as supporting or being connected with a candidate's election campaign.

- **Council branding and stationery**

No Council logos, letterheads, or other Council branding or Council resources or facilities may be used for, or linked in any way with, a candidate's election campaign.

- **Support staff to Council Members**

Employees of Council who provide support to Council Members must not be asked to undertake any tasks connected directly or indirectly with an election campaign for a Council Member.

- **Equipment and facilities**

Equipment and facilities (in particular iPads, stationary and business cards) provided to Council Members for the purpose of conducting normal Council business must not be used for campaigning purposes, however can be used during an election period for normal Council business.

(7) Other significant decisions which are prohibited by operation of this Policy

Significant Decision	Notes
Any major policy or other decisions which will significantly affect the Council area or community or will bind the incoming Council	This is an internal requirement of Council

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, instead, ensure that such decisions:

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

In the context of this policy, 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;
- 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 CEO

(8) Role of the Chief Executive Officer

The determination as to whether or not any decision is significant will be made by the Chief Executive Officer, after consultation with the Mayor/Chairperson. The Chief Executive Officer must keep a record of all such determinations made by Chief Executive Officers (including previous Chief Executive Officers) and make this list available to candidates upon request.

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 to assess whether the decision should be deferred for consideration by the incoming Council.

(9) Considerations for urgent decisions

Where the Chief Executive Officer has determined that a decision is a major policy decision or is otherwise significant and therefore is covered by 6.6 above, and circumstances arise that require the decision to be made during the election period, the Council will consider the matter and determine whether to make the decision.

The report to Council will address the following issues, where relevant:

- (a) Why the matter is considered 'significant';
- (b) Why the matter is considered urgent;
- (c) What are the financial and other consequences of postponing the matter until after the election, both on the current Council and the incoming Council;
- (d) Whether deciding the matter will significantly limit the options of the incoming Council;
- (e) Whether the matter requires the expenditure of unbudgeted funds;
- (f) Whether the matter is the completion of an activity already commenced and previously endorsed by Council;
- (g) Whether the matter requires community engagement;
- (h) Any relevant statutory obligations or timeframes; and
- (i) Whether dealing with the matter in the 'election period' is in the best interests of the Council area and community.

The aim of the report is to assist Council Members assess whether the decision should be deferred as a decision for the incoming Council.

COUNCIL ENDORSEMENT

This Policy was first adopted by resolution of the Council on 25 May 2010, Resolution No.2241/10.

The Policy was reviewed and updated in May 2022.

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.berribarmera.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.

Electronic version on the Intranet is the controlled version.

Printed copies are considered uncontrolled.

Before using a printed copy, verify that is the current version.