

# DISTRICT COUNCIL OF KIMBA

## 1.20 Caretaker Policy



## DOCUMENT APPROVAL

This document has been endorsed and approved for use by:

*Debra Larwood*

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Debra Larwood  
CEO District Council of Kimba

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Date

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<b>Authorised By</b>	Debra Larwood

### Change History

Version	Issue Date	Author	Reasons for Change
1	April 2010	D Cearns	
2	December 2011	D Cearns	Review
3	December 2012	D Cearns	Review
4	August 2014	D Larwood	Review
5	11/05/2016	D Cearns	Review
6	14/02/2018	L Keane	Review
7	08/06/2022	E Maxwell	Full Review following release of new Caretaker Policy from LGA in conjunction with Kelledy Jones Lawyers

## 1. INTRODUCTION

- 1.1 This Caretaker Policy aims to guide the conduct Council Members and staff of the District Council of Kimba during the lead-up to the Local Government periodic elections, and provides information regarding decision making during an election period to ensure that:
- 1.1.1 the incumbent Council does not inappropriately make certain decisions that will be binding on an incoming Council;
  - 1.1.2 incumbent Council Members do not receive (or are perceived to receive) any advantages or disadvantages over other candidates, as a result of their current position as a member of the Council;
  - 1.1.3 the day-to-day business of Council continues to operate as efficiently and effectively as possible; and
  - 1.1.4 Council resources are not inappropriately diverted to, or influenced for, electoral purposes.

## 2. POLICY STATEMENT

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

## 3. DEFINITIONS

In this Policy:

**Chief Executive Officer (CEO)** means the appointed CEO, including any person acting in that role or his/her delegate.

**Council** means the District Council of Kimba.

**Council staff** means any person that is employed full-time, part-time or on a casual basis by the Council, who receives remuneration for their work.

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

**Council resources** means any asset or service owned or administrated by the Council, including property, staff, equipment, vehicles, internet, telecommunications and media services, stationery and hospitality services, used in the course of carrying out normal Council business.

**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, when the results have been declared.

**designated decision** means a decision:

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

- (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 CEO);
  - 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;

**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*.

**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*.

**Senior Management Team** means the CEO and Works Manager.

#### 4. APPLICATION OF THIS POLICY

- 4.1 This Policy applies throughout the election period for a general election.
- 4.2 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.
- 4.3 This Policy applies to:
- 4.3.1 the Council, as a governing body; and
  - 4.3.2 Council staff.

#### 5. PROHIBITION ON DESIGNATED DECISIONS

- 5.1 The Council is prohibited from making a designated decision during an election period. A decision of the Council includes, except where otherwise stated, a decision of:
- 5.1.1 a committee of the Council; and

- 5.1.2 a delegate of the Council.
- 5.2 So far as is reasonably practicable, the CEO should avoid scheduling significant decisions (including major policy decisions) for consideration during an election period, and ensure that such decisions:
  - 5.2.1 are considered by Council prior to the election period; or
  - 5.2.2 are scheduled for determination by the incoming Council.
- 5.3 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 A **major policy** decision includes any decision, not being a designated decision pursuant to s91A(8) of the *Local Government (Elections) Act 1999*:
  - 5.4.1 to spend unbudgeted monies;
  - 5.4.2 to conduct unplanned public consultation;
  - 5.4.3 to endorse a new policy;
  - 5.4.4 to dispose of Council land;
  - 5.4.5 to approve community grants;
  - 5.4.6 to progress any matter which has been identified as an election issue; and
  - 5.4.7 any other issue that is considered a major policy decision by the Chief Executive Officer.
- 5.5 The determination as to whether or not any decision is significant will be made by the CEO, after consultation with the Mayor.
- 5.6 Where the CEO has determined that a decision is significant, but circumstances arise that require the decision to be made during the election period, the CEO will report this to Council.
- 5.7 The aim of the CEO's report is to assist Council Members assess whether the decision should be deferred for consideration by the incoming Council.
- 5.8 The CEO's report to Council will address the following issues (where relevant):
  - 5.8.1 why the matter is considered significant;
  - 5.8.2 why the matter is considered urgent;
  - 5.8.3 what are the financial and other consequences of postponing the matter until after the election, both on the current Council, and the incoming Council;
  - 5.8.4 whether deciding the matter will significantly limit options for the incoming Council;

- 5.8.5 whether the matter requires the expenditure of unbudgeted funds;
  - 5.8.6 whether the matter is the completion of an activity already commenced and previously endorsed by Council;
  - 5.8.7 whether the matter requires community engagement;
  - 5.8.8 any relevant statutory obligations or timeframes; and
  - 5.8.9 whether dealing with the matter in the election period is in the best interests of the Council area and community.
- 5.9 Council will consider the Chief Executive Officer's report and determine whether or not to make the decision.

## **6. PROHIBITION ON THE USE OF COUNCIL RESOURCES**

- 6.1 Council resources must not be used for the advantage of a particular candidate or group of candidates.
- 6.2 For clarity, neither the *Local Government (Elections) Act 1999*, nor this Policy, prohibits a Council providing resources to all members of the public, which incidentally includes all candidates for election.
- 6.3 The following, non exhaustive list of 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:
  - 6.3.1 mobile phones;
  - 6.3.2 Council vehicles;
  - 6.3.3 Council-provided landline phones, computers and other office equipment, beyond that provided to members of the public, for example, in a public library;
  - 6.3.4 Council-provided business cards;
  - 6.3.5 requests to Council employees to perform tasks which would confer an advantage on a candidate, or group of candidates;
  - 6.3.6 the ability to issue invitations to Council events;
  - 6.3.7 Council travel arrangements, such as access to Council-negotiated rates for flights, accommodation or hire cars;
  - 6.3.8 access to areas that members of the public cannot access, including areas within the property of third parties, for example, a 'Mayor's Parlour' at a suburban football oval; and
  - 6.3.9 Council's produced promotional brochures and documents.

- 6.4 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, a candidate's election campaign.
- 6.5 The use of Council logos, letterheads and other corporate branding by candidates, or others acting on behalf of candidates, for electioneering activity is prohibited.
- 6.6 The use of images taken by Council staff, including those appearing on the Council website and social media platforms, by candidates, or others acting on behalf of candidates, for electioneering activity is prohibited.
- 6.7 Any assistance provided to candidates in terms of Council resources as part of the conduct of the general election will be provided equally to all candidates, with the types of assistance available to be documented and communicated to all candidates in advance of the election period.

## 7. CONSEQUENCE OF CONTRAVENING THIS POLICY

- 7.1 In accordance with section 91A(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.
- 7.2 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 under section 91A(6) of the *Local Government (Elections) Act 1999*.

## 8. APPLICATION FOR EXEMPTION

- 8.1 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 that designated decision that would otherwise be invalid under section 91A of the *Local Government (Elections) Act 1999*.
- 8.2 If the Minister grants an exemption to enable the making of a designated decision under section 91A of the *Local Government (Elections) Act 1999*, then the Council and Council staff will comply with any conditions or limitations that the Minister imposes on the exemption.

## 9. EVENTS

- 9.1 The following Council-organised events and ceremonies will be subject to the following variations or restrictions during the election period;
  - 9.1.1 **Formal Citizenship ceremonies** will take place during the election period under the delegation of the CEO, pursuant to the *Australian Citizenship Act 2007* and s99(1)(j) of the *Local Government Act 1999*.
  - 9.1.2 **Opening ceremonies** set up for the opening of a facility or project developed, owned or managed by Council, will be deferred until the conclusion of the election period.

- 9.2 No major events will be scheduled to take place within the election period, unless the event is a state, or region, wide activity.
- 9.3 When an event is a state, or region, wide activity, any official duties will be undertaken by the CEO.

## **10. MEDIA**

- 10.1 Media Releases during the election period will be limited to operational issues. Council will not make comment on individual election campaigns, except in circumstances where harmfully inaccurate comments are made by a candidate. In these circumstances, the CEO reserves the right to correct the inaccuracy.
- 10.2 During the election period, no media advice or support will be provided to Council Members who have nominated as candidates, or anyone acting on behalf of a candidate.
- 10.3 During the election period, the Council will not respond to publicity or media inquiries involving individual candidates or election issues, unless the publicity pertains to comments specified in clause 10.1 of this Policy.
- 10.4 Council's social media accounts will be used to promote the upcoming election process, for the purposes of encouraging people to vote, including links to candidate information on the Local Government Association of South Australia website.
- 10.5 Council's social media accounts **will not** be used to promote individual candidates, or link to, any Council Member or candidate's social media accounts.
- 10.6 The public's ability to post comments on Council's social media accounts will be disabled for the duration of the election period.
- 10.7 The Annual Report is not bound by this Policy to ensure Council complies with regulatory requirements of the *Local Government Act 1999* and subordinate legislation.

## **11. CONTACT WITH STAFF**

- 11.1 The CEO 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.
- 11.2 During the election period, Council Members will direct all queries, requests and access to information through the Senior Management Team.

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

- 12.1 Nothing in this Policy prevents the Mayor, Council Members and staff carrying on the business of the Council during the caretaker period.
- 12.2 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.



12.3 The Mayor, in addition to the CEO, will continue to be Council's spokesperson in the media or in other official capacities, however, regard will be had as to whether these are functions that should be undertaken by the CEO during this period on a case by case basis.

### **13. RELATED POLICIES**

13.1 This Policy forms part of, and is to be read in conjunction with, any prescribed code of conduct or behavioural standards published under the *Local Government (Elections) Act 1999*.

13.2 This Policy should also be read in conjunction with the following:

- Local Government Association of South Australia Caretaker Guidelines; and
- Elected Members Allowances and Support Policy.

### **14. COUNCIL ENDORSEMENT**

This Policy was adopted by resolution of Council on 13<sup>th</sup> July 2022

### **15. REVIEW AND EVALUATION**

This Policy is scheduled for review by Council in June 2026.

### **16. AVAILABILITY OF POLICY**

This Policy is available to be downloaded, free of charge, from Council's website: [www.kimba.sa.gov.au](http://www.kimba.sa.gov.au) A printed copy may be purchased on request from the Council Office.