



City of
Norwood
Payneham
& St Peters

NAME OF POLICY: Local Government Elections Caretaker Policy & Guidelines

POLICY MANUAL: Governance

BACKGROUND

The *Local Government (Elections) Act 1999*, 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 Local Government General Election. Section 91A(2) of the *Local Government (Elections) Act 1999*, stipulates that the Caretaker Policy must, at a minimum, prohibit the making of certain designated decisions by the Council during an election period and prohibit the use of Council resources for the advantage of a particular candidate or group of candidates during an election period..

This Policy has been prepared on the basis of meeting these legislative obligations. Local Government Elections Caretaker Guidelines have also been prepared to assist with the interpretation of the Policy and provide further information and examples.

POLICY STATEMENT

It has been a long established democratic principle within Local Government, 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.

The *Local Government Elections Caretaker Policy and Guidelines* affirms this Council's commitment to fair and democratic elections and will assist in ensuring that the Council conducts its business throughout the Election Period in a responsible and transparent manner and in accordance with statutory requirements.

KEY PRINCIPLES

The City of Norwood Payneham & St Peters is committed to ensuring and achieving good governance and responsible leadership for its community. The Policy and Guidelines aim to provide guidance and information regarding decision making and activities during an Election Period to the Council, Council staff and the community to ensure that:

- the day-to-day business of the Council continues efficiently during the Election Period;
- the incumbent Council does not inappropriately make decisions that will be binding on the incoming Council; and
- the Council is committed to the conduct of efficient, equitable and accountable Local Government elections within its area.

DEFINITIONS

For the purpose of this Policy the following definitions will apply:

Caretaker Period — the period commencing on 6 September 2022 (that is, at the close of nominations) and ending at the conclusion of the General Election, when the results have been officially declared by the Electoral Commissioner of South Australia.

Chief Executive Officer — the Chief Executive Officer (including their delegate) of the City of Norwood Payneham & St Peters, or an Acting Chief Executive Officer of the City of Norwood Payneham & St Peters (including their delegate).

Council — the City of Norwood Payneham & St Peters.

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

Elected Member — an Elected Member of the City of Norwood Payneham & St Peters.

Election Period — 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 — 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 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 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.

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

APPLICATION OF THE POLICY

- 1.1. This Policy applies throughout the Election Period for a General Election.
- 1.2. For the purposes of the Local Government Elections to be held in November 2022, this Policy will apply during the City of Norwood Payneham & St Peters Caretaker Period, commencing on 6 September 2022 (that is, at the close of nominations) and ending at the conclusion of the General Election, when the results have been officially declared by the Electoral Commissioner of South Australia.
- 1.3. This Policy applies to:
 - 1.3.1. the Council (ie all of the Elected Members); and
 - 1.3.2. Council staff.
- 1.4. This Policy is to be taken to form part of the *Code of Conduct for Council Members*.
- 1.5. This Policy does not apply to Local Government Supplementary Elections held in accordance with Section 6 of the *Local Government (Elections) Act 1999*.

PROHIBITION ON DESIGNATED DECISIONS

- 2.1 The Council is prohibited from making a Designated Decision during an Election Period.
- 2.2 A decision of the Council includes a decision of:
 - a Committee of the Council; and
 - a Delegate of the Council.

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:
 - are considered by Council prior to the 'election period'; or
 - 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):
 - 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 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 or Chairperson (as relevant). The Chief Executive Officer must keep a record of all such determinations made by Chief Executive Officers (including by previous Chief Executive Officers) and make this list available to candidates upon request.

- 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 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):
- 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.
- 3.8 The Council will consider the Chief Executive Officer's report and determine whether or not to make the decision.

PROHIBITION ON THE USE OF COUNCIL RESOURCES

- 4.1 Council resources must not be used for the advantage of a particular candidate or group of candidates.
- 4.2 For clarity, neither the *Local Government (Elections) Act 1999* or this Policy prohibits a Council providing resources to all members of the public, which includes all candidates for election.
- 4.3 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 Elected Members, where necessary, in the performance of their ordinary duties as a Council Member:
- Council provided Mobile phone (Mayor only);
 - Council provided IPADs;
 - Council provided business cards;
 - Requests to Council staff perform tasks which would confer an advantage on a candidate or group of candidates;
 - Access to areas that members of the public cannot access, including areas within the property of third parties (eg the 'Mayor's Parlour' at the Norwood Oval); and
 - Council produced promotional brochures and documents.

CONSEQUENCES OF CONTRAVENING THIS POLICY

- 5.1 A Designated Decision made by the Council during an Election Period is invalid, except where an exemption has been granted by the Minister¹.
- 5.2 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 damage².

¹ Section 91A(5) *Local Government (Elections) Act 1999*

² Section 91A(6) *Local Government (Elections) Act 1999*

APPLICATION FOR EXEMPTION

- 6.1 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 Policy³.
- 6.2 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, the Council and Council staff must comply with any conditions or limitations that the Minister imposes on the exemption⁴.

CONTINUING THE ORDINARY FUNCTIONS OF THE COUNCIL DURING THE CARETAKER PERIOD

This Policy does not prevent the Mayor, Elected Members and Council staff carrying on the ordinary business of the Council during the Caretaker Period.

For instance, the Mayor and Elected Members may continue to accept invitations to attend community functions where it would be normal practice for them to attend, and Council publications may continue to be published as part of the usual activity of the Council should there not have been an election occurring. Notwithstanding the above, the Chief Executive Officer will ensure, as far as is practical, that Council initiatives will not be launched during the Caretaker Period.

The Mayor will continue in their role as the Council's spokesperson in terms of the media and at official functions. In some instances, the Mayor may determine to appoint the Chief Executive Officer as the spokesperson for the Council, depending on the nature of the issue.

Refer to the Local Government Elections Caretaker Guidelines for a more detailed examination of the above scenarios.

REVIEW PROCESS

The Council will review this Policy in the lead up to the next Local Government General Election.

INFORMATION

The contact officer for further information is the Council's General Manager, Governance & Community Affairs, telephone 8366 4549 or via email: lmara@npsp.sa.gov.au

ADOPTION OF THE POLICY

- This Policy was adopted by the Council on 7 June 2010.
This Policy was adopted by Council on 4 August 2014.
This Policy was adopted by the Council on 6 August 2018.
This Policy was reviewed and adopted by the Council on 1 August 2022.

TO BE REVIEWED

July 2026

³ Section 91A(3) *Local Government (Elections) Act 1999*

⁴ Section 91A(4) *Local Government (Elections) Act 1999*

LOCAL GOVERNMENT ELECTIONS CARETAKER GUIDELINES

BACKGROUND

The *Local Government Elections Caretaker Guidelines* (Caretaker Guidelines) are a supplement to the *Local Government Elections Caretaker Policy* and provide an overview of the scope and meaning of the legislative requirements under Section 91A of the *Local Government (Elections) Act 1999*. The Caretaker Guidelines also examine the use of Council resources during an Election Period, including where resources are used for the ordinary business of the Council, for the advantage of candidates in the election, or by Elected Members for personal benefit (including campaigning).

Definitions provided within the *Local Government Elections Caretaker Policy* also apply to the Caretaker Guidelines.

1. OVERVIEW

In accordance with Section 91A(2) of the *Local Government (Elections) Act 1999*, a Council's Caretaker Policy must, at a minimum, prohibit the Council from making Designated Decisions during an Election Period and prohibit the use of Council resources for the advantage of a particular candidate or group of candidates during the election period

In considering how the Policy applies to the prohibition on making designated decisions, regard must be given to three (3) separate elements. In particular the following must be present:

- 1) a decision of council;
- 2) made during an election period;
- 3) which is a designated decision.

The caretaker policy must also prohibit the use of Council resources for the advantage of a particular candidate or group of candidates during the election period.

Decisions of the Council

Section 91A of the *Local Government (Elections) Act 1999* only applies to a decision of the Council. This includes decisions made directly by the Council or indirectly through a Council Committee or Delegate.

Election Period

Section 91A of the *Local Government (Elections) Act 1999*, prohibits the making of Designated Decisions during an Election Period. The use of Council resources for the advantage of a particular candidate or group of candidates is also prohibited.

An Election Period⁵:

- (a) commences on either:
 - (i) the day on which nominations for a General Election close; or
 - (ii) if a Council's Caretaker Policy specifies an earlier date, that date; and
- (b) expires at the conclusion of the General Election.

A decision which is made prior to the Election Period, but announced during the Election Period, will not be a Designated Decision for the purposes of Section 91A of the *Local Government (Elections) Act 1999*.

⁵ Section 91A(8) *Local Government (Elections) Act 1999*

The Council may apply in writing to the Minister for an exemption from the application of this section to a designated decision.

For the purposes of the Local Government Elections to be held in November 2022, the Council's Caretaker Period will commence on 6 September 2022 (that is, at the close of nominations) and will end at the conclusion of the election, when the results have been officially declared by the Electoral Commissioner of South Australia.

Designated Decisions

Only specific types of decisions will be designated decisions under section 91A of the *Local Government (Elections) Act 1999*. The designated decisions are outlined below. The *Local Government (Elections) Act 1999* stipulates that any designated decision made by a Council during an election period without a Ministerial exemption is invalid.

Any person who suffers a loss or damage as a result of acting in good faith on a designated decision made in contravention of section 91A of the *Local Government (Elections) Act 1999* is entitled to compensation from the council for that loss or damage.

Decisions relating to the Employment of the Chief Executive Officer

Any Council decision regarding the employment, remuneration or termination⁶ of the Chief Executive Officer made during an Election Period, other than a decision to:

- 1.5.1. appoint an acting Chief Executive Officer; or
- 1.5.2. suspend a Chief Executive Officer for serious and wilful misconduct⁷,

will be a Designated Decision.

Specific Contracting Decisions

Certain Council decisions regarding specific types of contracts made during an Election Period will be Designated Decisions.

Generally, a decision to enter into a contract, arrangement or understanding (other than a 'prescribed contract') 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 year⁸ will be a Designated Decision. However, there are exclusions from this general position provided in section 91A of the *Local Government (Elections) Act 1999* and the *Local Government (Elections) Regulations 2010* (the Elections Regulations).

- Prescribed Contracts

Prescribed Contracts are expressly excluded from the types of contracts which are able to be the subject of a Designated Decision. A 'prescribed contract' is defined in Section 91A of the *Local Government (Elections) Act 1999* to mean a Contract entered into by a Council for the purpose of undertaking road construction, road maintenance or drainage works.

Prescribed Contracts allow the Council to continue with its core road and drainage infrastructure work unaffected by the Caretaker Period.

- Exemptions

Other types of contracts are excluded from being the subject of a Designated Decision by the *Local Government (Elections) Regulations*.

⁶ Section 91A(8) *Local Government (Elections) Act 1999*

⁷ Regulation 12(1)(b) *Local Government (Elections) Regulations 2010*

⁸ Section 91A(8) *Local Government (Elections) Act 1999*

These types of decision are decisions:

- (a) relating 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*;
- (b) 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;
- (c) relating to the employment of a particular Council staff member (other than the Chief Executive Officer);
- (d) made in the conduct of negotiations relating to the employment of Council staff generally, or a class of Council staff members, 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
- (e) relating to a Community Wastewater Management Systems scheme that has, prior to the Election Period, been approved by the Council.

Decisions Regarding the Use of Council Resources

Prohibition of the use of Council Resources

A Council's Caretaker policy must prohibit the use of Council resources for the advantage of a particular candidate or group of candidates during an election period. A Caretaker policy may however allow the equal use of resources by all candidates for election.

The prohibition does not prevent all candidates, including current Elected Members utilising Council resources that are available to all members of the public (ie using a Council Library public computer to design election campaign material and produce copies for distribution on a Council photocopier that is available to the general public). Candidates should not be given access to Council facilities that are not available to other candidates.

The *Local Government Act 1999* and the *Code of Conduct for Council Members* impose constraints on the personal use of Council resources by Elected Members. These provisions are discussed in more detail below.

- Council Resources

'Council resources' is a broad concept which is not defined in the *Local Government (Elections) Act 1999*. Based on a general definition of the term 'resources' provided in the Macquarie Dictionary (ie 'the collective wealth and assets of a country, organisation, individual'), the term 'Council resources' is taken to mean 'any asset or information owned or controlled by a Council'.

Council resources may include:

- (a) materials published by the Council;
- (b) facilities and goods owned by the Council;
- (c) attendance and participation at functions and events;
- (d) access to Council information; and
- (e) media services.

Council staff and contractors engaged by the Council are also classified as Council resources.

- Meaning of 'advantage'

The concept of advantage is broad and is defined in the *Macquarie Dictionary* as 'any state, circumstance, opportunity, or means especially favourable to success, interest, or any desired end'. In the context of Section 91A of the *Local Government (Elections) Act 1999*, the relevant advantage is in respect of being elected or re-elected.

An advantage will be conferred where a decision allowing the use of Council resources favours one candidate over another. An advantage arises when a candidate utilises resources, information or support that is not available to a candidate in an election who is not a current Elected Member.

The South Australian Ombudsman has given 'advantage' a broad interpretation. The Ombudsman's view is that any activity that gives a perception of favouring one candidate over another is an advantage. In previous decisions of the Ombudsman:

- (a) a decision to engage an independent contractor to conduct a Section 270 Review of a procurement decision did not involve the use of Council resources for the advantage of a particular candidate, even though a possible outcome of the review would have assisted or harmed the electoral chances of particular candidates.
- (b) a decision to include a Mayor's review of the achievements of the Council in an Annual Report did provide such an advantage.

Whether the scope of the 'advantage' under Section 91A of the *Local Government (Elections) Act 1999* extends to a perceived advantage is likely to be a matter for debate. Notwithstanding this, the Council should be aware of this view when making decisions during an Election Period.

- Normal Council Business or Campaigning?

There is no relevant advantage where Council resources are used exclusively for normal Council business during an Election Period and are not used in connection with a candidate's election campaign.

It is important, however, that the Council continues to function during the Election Period. The ordinary business of the Council is to be conducted during the Election Period and interactions with community organisations, businesses or government should continue relative to the issues currently before the Council.

For example, if the Mayor or Elected Members are invited to a function of a community group during the Election Period and it would be normal practice for them to attend, then attendance at the function is not prohibited. Council resources may also need to be provided to enable that attendance (eg the drafting of a speech for the Mayor or the preparation of a media statement may be required).

Examples of Council resources that, if used during the election period for campaign purposes, or purposes that would otherwise provide a genuine advantage to the candidate, which would contravene a Council Caretaker policy include:

- (a) mobile phones;
- (b) Council vehicles;
- (c) Council-provided landline phones, computers (IPADs), and other office equipment beyond that provided to members of the public (eg in a public library);
- (d) Council-provided business cards;
- (e) requests to Council employees to perform tasks;
- (h) 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); and
- (i) Council printed materials (brochures or other documents).

It is however reasonable for Councils to continue to provide resources where these are necessary for an Elected Member to perform their duties, provided the resources are not used to advantage a candidate or group of candidates. For example:

- (a) access to Council facilities, for the purpose of a Council meeting. This may include refreshments, if usually provided as an adjunct to Council meetings; and
- (b) access to a secure area of the Council website, where Council agendas, minutes and other Council documents can be obtained.

In the circumstances whereby the Mayor and/or an Elected Member is pursuing a particular issue during his/her campaign and this issue is one that has been the subject of Council debate, caution must be exercised when using information that has been provided to them as an Elected Member but may not be accessible to general candidates.

Candidates seeking information from the Chief Executive Officer or Council staff, may have access to information provided it is public information.

Reasonable minds are likely to differ over whether the use of particular Council resources will advantage particular candidates. Due propriety and appropriate judgment should be exercised in making decisions to use Council resources during Election Periods to ensure that the Council and its Elected Members are not open to criticism.

- Use of Council Resources for Personal Benefit

The use of Council resources for personal benefit is distinct from the prohibition against the use of Council resources for the advantage of a particular candidate or group of candidates.

The use of Council resources for personal benefit is regulated by legislation other than Section 91A of the *Local Government (Elections) Act 1999*. The use of Council resources by an Elected Member for the purposes of an election campaign, will be a use of those resources for personal benefit. Elected Members standing for re-election to the Council must ensure that they only use Council resources for ordinary Council business and not to assist them in campaigning.

The general duties of Elected Members, in accordance with Section 62 of the *Local Government Act 1999*, include offences for the improper use of information⁹ or position¹⁰ to gain a personal advantage for an Elected Member or another person. A maximum penalty of \$10,000 or imprisonment for two (2) years applies to these offences.

Section 78 of the *Local Government Act 1999*, which provides for the use of Council resources by Elected Members, states that:

A member of a council must not use a facility or service provided by the council under this section for a purpose unrelated to the performance or discharge of official functions or duties (unless the use has been approved by the council and the member has agreed to reimburse the council for any additional costs or expenses associated with this use).

The *Code of Conduct for Council Members* prohibits the use Council resources for private purposes without authorisation.

The use of Council resources for personal benefit in breach of the requirements of the Codes of Conduct, could be determined to be misconduct or corruption under the *Independent Commissioner Against Corruption Act 2012* (SA) and be the subject of a complaint to the Office of Public Integrity (OPI) or the South Australian Ombudsman.

The conduct of a Public Officer that results in a substantial mismanagement of public resources may also be the subject of a complaint to the South Australian Ombudsman.

⁹ Section 62(3) *Local Government Act 1999*

¹⁰ Section 62(4) *Local Government Act 1999*

Disciplinary consequences or prosecutions may ultimately result from the unauthorised use of Council resources for private purposes.

Specific Council Resource Scenarios

The business of the Council does not cease during the Election Period. Council resources will continue to be used during the Election Period.

There is a distinction between the use of Council resources in the ordinary course of Council operations and the use of Council resources by a Candidate or group of Candidates for campaigning purposes. Where resources are used for campaign purposes, this will be deemed to be the use of Council resources for personal benefit.

During an Election Period, Elected Members and Council staff must take care that Council resources are not used for the purpose of election campaigning. Some specific examples are provided below where this issue may arise.

- Council Publications during an Election Period

A decision by the Council to publish information for the advantage of a particular candidate or group of candidates (other than a decision which allows for the equal use of Council resources by all Candidates for election) is prohibited by Section 91A of the *Local Government (Elections) Act 1999*.

'Publishing' includes publication by any medium, including but not limited to leaflets, newspapers, posters, email, websites, radio or television. This does not include, however, the publication of information, a press release or articles by the Mayor if this would form part of the ordinary course of business of the Council.

Councils have a statutory responsibility to publish certain information regarding General Elections. Pursuant to Section 12(b) of the *Local Government (Elections) Act 1999*, each Council is responsible for the provision of information, education and publicity designed to promote public participation in the electoral processes for its area, to inform potential voters about the candidates who are standing for election in its area, and to advise its local community about the outcome of the elections and polls conducted in its area.

All election materials published by the Council should fall within the types of material described by Section 12(b) of the *Local Government (Elections) Act 1999* and will not contain any material which would advantage a particular candidate or candidates.

'Electoral material' is defined in the *Local Government (Elections) Act 1999* as 'an advertisement, notice, statement or representation calculated to affect the result of an election or poll'. Given that the purpose of electoral material is to persuade voters towards a particular candidate or group of candidates, it will not be appropriate for a Council to publish electoral material.

Councils may publish other material during an Election Period. The material published during this period should reflect ordinary Council business and the usual activity of the Council should there not have been an election occurring. If the Council or a Council delegate is considering making a decision to publish material during the Election Period, the Council or delegate 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 .

Where a Council publication made in the ordinary course of Council operations would be published during an Election Period (and this is not the subject of a Council decision made during the Election Period), the publication will not contravene Section 91A of the *Local Government (Elections) Act 1999*.

However, consideration of the contents of these publications must be given, to ensure that the Council and Elected Members are not criticised for publishing information which may assist or hinder the electoral prospects of particular candidates.

Elected Members are able to publish electoral material on their own behalf (provided that they comply with Sections 27 and 28 of the *Local Government (Elections) Act 1999*. Elected Members should not assert or imply that the electoral material originates from or is endorsed by the Council. An Elected Member must also not use Council resources to create or distribute his/her electoral material, including through the use of Council stationary, computers, printers, photocopiers or staff or the application of the Council's logos.

During an Election Period, material which is prohibited by the Local Government Elections Caretaker Policy and Guidelines, will not be placed on the Council's website. Any information which refers to the election, will only relate to the election process by way of information, education or publicity.

Information about Elected 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 a link to the Local Government Association of South Australia's publication of candidate profiles and electoral statements for the purposes of Section 19A of the *Local Government (Elections) Act 1999*.

- Attendance at Events and Functions

Events and functions can take many forms, including conferences, workshops, forums, launches, promotional activities, and social occasions (eg dinners, receptions etc).

Elected Members can continue to attend events and functions during an 'Election Period, provided that their attendance is consistent with the ordinary course of their duties and is not used for campaigning.

Elected Members should consider whether or not their attendance at an event or function is likely to be viewed as campaigning. In part, this may depend on the conduct of the Election Member while in attendance at the event or function. Care should particularly be taken by Elected Members, if they are asked to give a speech at an event or function during an Election Period.

The Mayor and Elected Members must not give speeches or keynote addresses at Council-organised or sponsored events and functions during an Election Period. The Mayor and Elected Members may, however, make short welcome speeches at Council-organised or sponsored events and functions during an Election Period.

- Access to Council Information

Section 61 of the *Local Government Act 1999* provides Elected Members with a right to access Council documents in connection with the performance or discharge of the functions or duties of the Elected Member. This right of access continues during an Election Period.

Elected Members should take care that access to Council documents is in connection with the performance or discharge of their functions or duties as an Elected Member.

Access to Council documents for the purpose of campaigning or to gain an advantage in an election is an improper use of information gained by virtue of the Elected Member's position as a Member of Council.

Elected Members can be prosecuted for the improper use of Council information to gain an advantage for themselves or another person. Maximum penalties of \$10,000 or two (2) years imprisonment apply¹¹.

¹¹ Section 62(4) *Local Government Act 1999*

- Media Services

The Council's media services are provided to promote the Council's activities or initiatives, or community activities or initiatives which are endorsed or otherwise supported by the Council, and must not be used in any manner that might favour a candidate during an 'Election Period.

Media services will, during the Election Period, be used in the ordinary course of the Council's operations and will continue to operate in accordance with standard protocols. Care should be taken that media services will not be used to advantage a particular Elected Member in his or her re-election campaign (eg by profiling that member or activities which are closely associated with that Elected Member)

Any request for media advice or assistance from Elected Members during the Election Period will be referred in the first instance to the General Manager, Governance & Civic Affairs. No media advice will be provided in relation to election issues or in regard to publicity that involves specific Elected Members.

In some instances, the Mayor may determine to appoint the Chief Executive Officer as the spokesperson for the Council on some issues, depending on the nature of the issue.

Elected Members are not to use their position as an elected representative or their access to Council staff and other Council resources to gain media attention in support of an election campaign. To do so, would contravene Section 62(4) of the *Local Government Act 1999*, which prohibits an Elected Member improperly using his/her position as an Elected Member to gain, directly or indirectly, an advantage for himself/herself or for another person.

Elected Members can be prosecuted for this offence and maximum penalties of \$10,000 or two (2) years imprisonment apply.

- Public Consultation during an Election Period

Public consultation must be undertaken during an Election Period if the consultation is mandated by legislation.

Where public consultation is discretionary then the consultation can occur during the Election Period, however, consideration should be given prior to the consultation being scheduled as to whether or not the consultation will influence the outcome of the election.

If the matter subject to the consultation is likely to be closely associated in the minds of voters with a particular candidate or group of candidates then it may be prudent to delay the consultation process until after the Election Period.

- Expenses Incurred by Elected Members

Payment or reimbursement of costs relating to Elected Members' out-of-pocket expenses incurred during an Election Period, will only apply to those necessary costs that have been incurred in the performance of normal Council duties.

This is consistent with the requirements applying to the reimbursement of Elected Member expenses under Section 77 of the *Local Government Act 1999*.

No reimbursements will be provided for campaign expenses or for expenses that could be perceived as supporting or being connected with a Candidate's election campaign.

- Council Branding and Stationery

Council logos, letterheads, Elected Member business cards or other Council branding or Council resources or facilities, are not to be used as part of a Candidate's election campaign.

The Mayoral letterhead is exempt from this clause in circumstances whereby the Mayor is utilising the Mayoral letterhead for the performance of his ordinary functions and duties of office as the Principal Member of the Council.

It is appropriate, however, for a Mayor or Elected Member to make it clear in their written publications that they are a current Elected Member.

- Support Staff to the Mayor and/or Elected Members

Council staff who provide support to the Mayor and Elected Members should not be asked to undertake any tasks connected directly or indirectly with an election campaign for an Elected Member, except where similar support is provided to all candidates.

The Mayor of the City of Norwood Payneham & St Peters has access to support staff for assistance with email and diary management and coordination of activities related to the performance of their role. During an election period it is important to ensure clear separation of 'business as usual' (ie acknowledging or responding to emails received, coordinating calendar appointments) and campaigning activity (e.g. preparation and distribution of campaign flyers) and that Council staff do not provide any assistance with any campaigning activity.

- Equipment and Facilities

Council resources such as iPads, stationery and Elected Member business cards can continue to be used by Elected Members during an Election Period for normal Council business.

Council resources are not to be used for campaign purposes as this will contravene the *Local Government Act 1999* and the *Code of Conduct for Council Members*.

Council Staff Activities During an Election Period

Council staff will not authorise, use or allocate a Council resource for any purpose which may influence voting in the election, except where it relates to the election process and is authorised by the Chief Executive Officer. This includes making Council resources available to Elected Members for campaign purposes.

Council staff must not assist an Elected Member with their election campaigns at any time, including outside working hours.

Whilst it is not illegal for Council staff to assist an Elected 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 matter must be reported to the Chief Executive Officer.

All Council staff must also comply with the mandatory reporting directions and guidelines issued by the Independent Commissioner Against Corruption.

Equity of Assistance to Candidates

- Candidate Assistance and Advice

All candidates for the Council election will be treated equally.

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

- Election Process Enquiries

All election process enquiries from candidates, whether current Elected Members or not, are to be directed to the Electoral Commissioner as the Returning Officer or, where the matter is outside of the responsibilities of the Returning Officer, to the Chief Executive Officer of the Council or the General Manager, Governance & Civic Affairs.