

Councillor Davis - MoN - Central Ward Election

Tuesday, 8 April 2025
Council

Council Member
Councillor Henry Davis

Public

Contact Officer:
Anthony Spartalis, Chief Operating Officer

MOTION ON NOTICE

Councillor Henry Davis will move a motion and seek a seconder for the matter shown below to facilitate consideration by the Council:

'That Council:

1. Implement the measures outlined in its own Caretaker Policy until either of the following occurs:
 - a. the court voids the entire Central Ward election, the conclusion of the new Central Ward election; or
 - b. the court voids only the seat of Cr Jing Li but not the entire Central Ward, the day following the court's orders to this effect.
2. Requests administration prepare and present a report detailing the legal fees incurred in relation to the Central Ward legal proceedings.
3. Seeks legal advice on whether the Council can recover legal costs from any parties responsible for the election illegalities.
4. Rescind the appointment of Cr Jing Li to the Adelaide Botanic High School and the Australia Day Council of SA.'

ADMINISTRATION COMMENT

1. Council adopted its Caretaker Policy (the Policy) ([Link 1](#)) under the authority of Section 91A of the *Local Government (Elections) Act 1999* (SA), which sets out the statutory requirements governing its application. The Policy is specifically designed to regulate decision-making during periods when a general election is expected to result in potentially significant changes to Council membership. Applying the Policy outside of those circumstances would constitute departure from its intended purpose.
2. The key provisions of the Caretaker Policy relate to:
 - 2.1 Prohibition on designated decisions;
 - 2.2 Treatment of other significant decisions;
 - 2.3 Prohibition on the use of Council Resources;
 - 2.4 Council Publications;
 - 2.5 Attendance at events and functions during an election period;
 - 2.6 Media service;
 - 2.7 City of Adelaide Employee responsibilities during an election period;

- 2.8 Public Consultation During an Election Period;
- 2.9 Handling Behavioural Matter Complaints During an Election Period.
3. Council has received advice that the proposed Motion on Notice is potentially ultra vires on the basis it purports to apply the Caretaker Policy in circumstances where:
- 3.1 The Caretaker Policy has been adopted pursuant to Section 91A of the *Local Government (Elections) Act 1999* (SA) (the Elections Act).
- 3.2 Section 91A of the Elections Act only relates to the preparation and adoption of a caretaker policy governing the Council and its staff during the election period for a general election.
- 3.3 The Caretaker Policy expressly states it does not apply to a supplementary election.
4. Further, advice has been received that a decision to apply the Caretaker Policy to the Council in circumstances outside those set out in Section 91A of the Elections Act could potentially constitute an unlawful fetter on the Council's discretion with respect to the making of decisions that are within its power to make.
5. At the meeting of Council on 11 March 2025, the Chief Executive Officer (CEO) gave an undertaking to provide information on the expenditure related to attendance at hearings in relation to the Court of Disputed Returns matter. Between service of the Petition on 16 December 2022 and the Court hearing on 7 March 2025, the cost of attendances totalled \$25,816, noting those fees related to more than 40 separate Court attendances.
6. Further costs relating to legal advice to Council in relation to the matter of *Alexander Hyde v Electoral Commissioner of South Australia & Jing Li (No 3) [2025] SADC 20* amounted to \$70,830.53, reflecting a total cost in legal fees in relation to the matter of \$96,646.53.
7. Should the proposed motion be supported by Council, administration will seek legal advice on whether the Council can recover legal costs from any parties responsible for the election illegalities.
8. It is a matter for Council as to when it chooses to review appointments it has made to various internal and external bodies. However, administration notes, that in the absence of a Court order to the contrary, Cr Li remains a member of Council and is therefore assumed to be capable of performing the functions and duties of that office, until such time as he ceases to be a member of the Council.

Should the motion be carried, the following implications of this motion should be considered. Note any costs provided are estimates only – no quotes or prices have been obtained:	
Public consultation	Not Applicable
External consultant advice	Not Applicable
Legal advice / litigation (eg contract breach)	If the proposed motion is supported legal advice will be sought regarding recovery of legal costs incurred by the City of Adelaide.
Impacts on existing projects	Not Applicable
Budget reallocation	Not Applicable
Capital investment	Not Applicable
Staff time in preparing the workshop / report requested in the motion	If the proposed motion is supported, it is anticipated a report detailing legal fees will take approximately 4 hours to prepare.
Other	Not Applicable
Staff time in receiving and preparing this administration comment	To prepare this administration comment in response to the motion on notice took approximately 5.5 hours.

- END OF REPORT -