

Significant Decisions during Caretaker period

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Council

Strategic Alignment - Enabling Priorities

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Public

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EXECUTIVE SUMMARY

The City of Adelaide [Caretaker Policy](#) (Link 1) (the Policy) was adopted by Council on 15 March 2022. In accordance with the Policy and the *Local Government (Elections) Act 1999* (SA) (the Act) Council must 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.

There are designated decisions which, under the Act, are explicitly prohibited to be made during the caretaker period. There are also 'significant decisions', consideration of which should be avoided, as far as is reasonably practicable, during the caretaker period. A 'significant decision' is any major policy decision or other decision which will significantly affect the Council area or community or will bind the incoming Council.

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
- any other issue that is considered a major policy decision by the Chief Executive Officer (CEO).

Where the CEO has determined that a decision is significant, but circumstances arise that require decisions to be made during the election period, the CEO will report this to the Council. The aim of the report is to assist Council Members in assessing whether the decision should be deferred until the conclusion of the Caretaker period.

This report is presented to Council to consider and approve the continuation of funding eligible applications for a number of grant programs during the Caretaker period in accordance with delegated authority, previously approved budgets and guidelines.

RECOMMENDATION

THAT COUNCIL

1. Notes the report.
2. Approves the Administration and Adelaide Economic Development Agency to continue to consider and approve funding applications in accordance with delegated authority and Council approved business plans and budgets for:
 - 2.1 Sustainability Incentives Scheme.
 - 2.3 Heritage Incentives Scheme.
 - 2.3 Rundle Mall Public Place Organics Recycling Pilot Business Incentives Program.
 - 2.4 Strategic Events Fund.

IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Enabling Priorities
Policy	As per the City of Adelaide Caretaker Policy (Link 1), 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 the Council. The Policy applies to Council and its subsidiaries.
Consultation	Not as a result of this report
Resource	Not as a result of this report
Risk / Legal / Legislative	Legal advice has confirmed that the CEO can put a report to Council prior to the election period (caretaker), requesting approval for the making of a significant decision (under delegation) during the election period.
Opportunities	These funding programs provide opportunities to increase the number of events in the city and to support residential and business ratepayers.
22/23 Budget Allocation	Not as a result of this report
Proposed 23/24 Budget Allocation	Not as a result of this report
Life of Project, Service, Initiative or (Expectancy of) Asset	Not as a result of this report
22/23 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (eg maintenance cost)	Not as a result of this report
Other Funding Sources	Not as a result of this report

DISCUSSION

1. The City of Adelaide Caretaker Policy (the Policy) was adopted by Council on 15 March 2022. In accordance with the Policy and the *Local Government (Elections) Act 1999* (SA) (the Act) Council must 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.
2. There are designated decisions which, under the Act, are explicitly prohibited to be made during the caretaker period. Designated decisions include decisions:
 - 2.1. Relating to the employment or remuneration of the Chief Executive Officer, other than a decision to appoint an acting Chief Executive Officer or to suspend the Chief Executive Officer for serious and wilful misconduct.
 - 2.2. To terminate the appointment of the Chief Executive Officer.
 - 2.3. 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 (\$1.18m), except if the decision:
 - 2.3.1. Relates to the carrying out of work 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).
 - 2.3.2. 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.
 - 2.3.3. Relates to the employment of a particular Council employee (other than the Chief Executive Officer).
 - 2.3.4. 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.
 - 2.3.5. Relates to a Community Wastewater Management System scheme that has, prior to the election period, been approved by the Council.
3. There are also 'significant decisions', consideration of which should be avoided, as far as is reasonably practicable, during the caretaker period. A 'significant decision' is any major policy decision or other decision which will significantly affect the Council area or community or will bind the incoming Council.
4. A 'major policy' decision includes any decision (not being a designated decision):
 - 4.1. to spend unbudgeted monies
 - 4.2. to conduct unplanned public consultation
 - 4.3. to endorse a new policy
 - 4.4. to dispose of Council land
 - 4.5. to approve community grants
 - 4.6. to progress any matter which has been identified as an election issue
 - 4.7. any other issue that is considered a major policy decision by the CEO.
5. The Policy impacts Council's decision making, decisions of Council's subsidiaries and decisions delegated to staff.
6. As per the Policy, the approval of community grants is considered a 'significant decision' and where the CEO has determined that a decision is significant, but circumstances arise that require the decision to be made during the Caretaker period, the CEO will report this to the Council. Accordingly, the CEO has determined that Council should consider whether we can continue the approval of grants and the distribution of funds during the election period.
7. The definition of 'community grants' for the purposes of the Policy are decisions that would result in the award of grants by the Council (Elected body, Administration or subsidiary) to organisations or individuals in the Council's community.

8. The approval of community grants has been included in the legislative definition of a 'significant decision' as the award of monetary amounts by government to third parties during an election is viewed as 'electioneering' and the Policy's stated intent is that no decisions, which could be perceived as intended to affect the result of an election, are to be made by the Council and the Administration during the election period. Providing government monies to third parties during the election period would generally be viewed as favouring incumbent elected officials.
9. Where possible, we have programmed calling for applications, assessment of applications and communicated offers of funding for programs including Christmas Incentive Scheme, Shopfront Improvement Grants, Community Infrastructure Grants and Strategic Partnership Program to be undertaken prior to the commencement of the Caretaker Period or held until the conclusion of the election period.
10. This report proactively seeks Councils support before entering the election period on the four projects below:
 - 10.1. Sustainability Incentives Scheme
 - 10.2. Heritage Incentives Scheme
 - 10.3. Rundle Mall Public Place Organics Recycling Pilot Business Incentives Program
 - 10.4. Strategic Events Fund
11. In presenting this report to Council the following issues have been addressed, in accordance with the Policy:
 - 11.1. Why the matter is considered 'significant'.
 - 11.2. Why the matter is considered urgent.
 - 11.3. What are the financial and other consequences of postponing the matter until after the election, both on the current Council and on the incoming Council?
 - 11.4. Whether deciding the matter will significantly limit options for the incoming Council.
 - 11.5. Whether the matter requires the expenditure of unbudgeted funds.
 - 11.6. Whether the matter is the completion of an activity already commenced and previously endorsed by Council.
 - 11.7. Whether the matter requires community engagement.
 - 11.8. Any relevant statutory obligations or timeframes.
 - 11.9. Whether dealing with the matter in the election period is in the best interests of the Council area and community.

Sustainability Incentives Scheme

12. The Sustainability Incentives Scheme (SI Scheme) provides financial incentives for sustainable technology installation in apartments, houses and commercial buildings, to improve energy and water performance. The SI Scheme has been offered by Council for a number of years and is heavily subscribed.
13. *Why the matter is considered 'significant'* - Council at its meeting on 12 July 2022 approved amendments to the SI Scheme. The SI Scheme has limited funding with eligible applications being considered until annual funding has been exhausted. Provision of funding through the SI Scheme is considered a community grant in terms of the Caretaker Policy.
14. *Why the matter is considered urgent* – Applicants include residents, businesses, non-profit community and sporting groups, and tenants, some of whom maybe Commonwealth Concession Card holders who may have budgeted to receive the grant funding through the SI Scheme to offset their costs:
 - 14.1. Whilst assessment of any applications received can continue during the Caretaker period, Council approval is required for a decision to be communicated to applicants during the Caretaker period. Withholding advice of the decision until after the election period may disadvantage SI Scheme applicants.
15. *What are the financial and other consequences of postponing the matter until after the election, both on the current Council and on the incoming Council* - Whilst there would be no financial impact on the current or incoming Council, there may be financial impacts for applicants if decisions cannot be communicated until after the election period.
16. *Whether deciding the matter will significantly limit options for the incoming Council* - There will be no impact on options for the incoming Council.
17. *Whether the matter requires the expenditure of unbudgeted funds* - Funding for this program is included within the approved 2022/23 City of Adelaide Business Plan and Budget.

18. *Whether the matter is the completion of an activity already commenced and previously endorsed by Council* – No.
19. *Whether the matter requires community engagement* - Community engagement is not required.
20. *Any relevant statutory obligations or timeframes* – None.
21. *Whether dealing with the matter in the election period is in the best interests of the Council area and community* - The SI Scheme provides financial incentives for sustainable technology installations in apartments, houses and commercial buildings to improve energy and water performance. Installation of these technologies could have the added benefit of reducing costs, cutting carbon emissions and increasing the value of the property.

Heritage Incentives Scheme

22. The Heritage Incentives Scheme (HI Scheme) reimburses owners of heritage and unlisted historic character places that meet specific criteria a portion of costs for professional advice and documentation and conservation work. The HI Scheme has been provided by the City of Adelaide since 1988 and is the most substantial local government heritage grant scheme in Australia.
23. *Why the matter is considered 'significant'* - The HI Scheme Provision of funding through the SI Scheme is considered a community grant in terms of the Caretaker Policy.
24. *Why the matter is considered urgent* – Owners of heritage places within the city may be considering conservation works for their property and subject to all application criteria being met, a decision on funding allocation could be made within the election period:
 - 24.1. Whilst assessment of any applications received can continue during the Caretaker period, Council approval is required for a decision to be communicated to applicants during the election period. Withholding advice of the decision until after the Caretaker period may disadvantage HI Scheme applicants.
25. *What are the financial and other consequences of postponing the matter until after the election, both on the current Council and on the incoming Council* - Whilst there would be no financial impact on the current or incoming Council, there may be impacts for applicants if decisions cannot be communicated until after the election period.
26. *Whether deciding the matter will significantly limit options for the incoming Council* - There will be no impact on options for the incoming Council.
27. *Whether the matter requires the expenditure of unbudgeted funds* - Funding for this program is included within the approved 2022/23 City of Adelaide Business Plan and Budget.
28. *Whether the matter is the completion of an activity already commenced and previously endorsed by Council* – No.
29. *Whether the matter requires community engagement* - Community engagement is not required.
30. *Any relevant statutory obligations or timeframes* – None
31. *Whether dealing with the matter in the election period is in the best interests of the Council area and community* – Adelaide's built heritage makes a significant contribution to the city's identity and its liveability. The HI Scheme provides the financial and other incentives to support owners in the conservation of their heritage places.

Rundle Mall Public Place Organics Recycling Pilot Business Incentives Program

32. The Rundle Mall Public Place Organics Recycling Pilot Business Incentives Program (the Program) is open to eligible cafes in Rundle Mall and adjacent lanes to improve waste diversion by switching from single-use plastics to compostable takeaway products and implementing a food organics bin service. The Program has limited funding with eligible applications being considered until the funding has been exhausted.
33. *Why the matter is considered 'significant'* – The Program commenced in April 2022 for a period of 12 months. Provision of funding through the Program is considered a community grant in terms of the Caretaker Policy.
34. *Why the matter is considered urgent* – This is a trial to assist businesses in the precinct to switch to certified compostable products and receive a rebate to support utilisation of a food organics bin service. As this is a trial, we are seeking to have as many businesses as possible involved and request that payments in accordance with the terms and conditions of the trial can to be made during the election period:
 - 34.1. If the payments cannot be paid in accordance with an agreed contract until after the completion of the election period, businesses who are participating in the Program may be financially disadvantaged.

35. *What are the financial and other consequences of postponing the matter until after the election, both on the current Council and on the incoming Council* - Whilst there would be no financial impact on the current or incoming Council, there may be financial impacts for businesses if decisions on their application/s cannot be communicated and payments made until after the election period.
36. *Whether deciding the matter will significantly limit options for the incoming Council* - There should be no impact on options for the incoming Council.
37. *Whether the matter requires the expenditure of unbudgeted funds* - Funding for this Program is included within the approved 2022/23 City of Adelaide Business Plan and Budget.
38. *Whether the matter is the completion of an activity already commenced and previously endorsed by Council* – No.
39. *Whether the matter requires community engagement* - Community engagement is not required.
40. *Any relevant statutory obligations or timeframes* – None
41. *Whether dealing with the matter in the election period is in the best interests of the Council area and community* – This Program is a 12-month trial. Subject to the outcomes of the trial, it may be recommended to the new Council that the Program is expanded to other areas of the city.

Strategic Events Fund

42. The Strategic Events Fund (the Fund) will assist in the staging of events that drive visitation, economic activity and vibrancy in the city. Funding is available for new events and to expand existing events. Applications opened on 14 July 2022 with applications to be received before 31 March 2023 unless funds are exhausted prior.
43. *Why the matter is considered 'significant'* - Council at its meeting on 15 December 2020 approved funding of \$500,000 to support new events and \$500,000 to support the expansion of existing events in 2021/22 and 2022/23:
 - 43.1. Council as part of the adoption of the 2022/23 Business Plan and Budget approved this funding allocation for 2022/23 and additional funding of \$557,000 that was unspent from the budget commitment in 2021/22.
 - 43.2. Applications for new events can seek funding of up to \$100,000 per event, and for expansion of existing events can seek funding of up to \$50,000 per event.
 - 43.3. Provision of funding through the Fund is considered a community grant in terms of the Caretaker Policy.
44. *Why the matter is considered urgent* - The Guidelines for this fund contain the assessment and approval process. Whilst assessment of any applications received could continue during the election period, a decision cannot be made, and applicants advised which could disadvantage opportunities for events prior to Christmas or proposed to be held in early 2023.
45. *What are the financial and other consequences of postponing the matter until after the election, both on the current Council and on the incoming Council* - Whilst there would be no financial impact on the current or incoming Council, there may be impact if decisions to support new events or expansion of existing events cannot be communicated to applicants, therefore creating a risk that the proposed events cannot proceed.
46. *Whether deciding the matter will significantly limit options for the incoming Council* - There should be no impact on options for the incoming Council.
47. *Whether the matter requires the expenditure of unbudgeted funds* - Funding for this program is included within the approved 2022/23 City of Adelaide Business Plan and Budget and delivery of the program is a commitment within the approved 2022/23 AEDA Business Plan.
48. *Whether the matter is the completion of an activity already commenced and previously endorsed by Council* – Yes, this is the second year of funding committed by Council to support new events and expansion of existing events.
49. *Whether the matter requires community engagement* - Community engagement is not required.
50. *Any relevant statutory obligations or timeframes* – None
51. *Whether dealing with the matter in the election period is in the best interests of the Council area and community* - The purpose of the Strategic Events Fund is to provide financial support to eligible groups and organisations to assist in the staging of events and festivals held within the City of Adelaide boundary:

- 51.1. Recent research undertaken by McGregor Tan to understand what will attract city users and city workers back to the city, identified events as the strongest driver and creating a consistent and diverse event offering across the year appeals to all walks of life.

Risks if recommended approval not provided

52. The nominated funding programs support the delivery of a number of Council's strategic priorities including to:
- 52.1. Ensure Adelaide is globally recognised as an affordable and innovative place to do business.
 - 52.2. Celebrate our city's unique built, natural and cultural heritage.
 - 52.3. Lead the way in climate action and manage water, waste, transport and greening in a sustainable way.
 - 52.4. Expand Adelaide's global reputation as a 'magnet city' through world class events, festivals and activation.
53. The Sustainability Incentives Scheme and Heritage Incentive Scheme have been available to assist city residents, businesses and owners for a number of years. Any delay in advising successful applicants of approved funding through these schemes due to the election period may financially disadvantage applicants.
54. The Rundle Mall Public Place Organics Recycling Pilot Business Incentives Program is a time limited trial. Withholding decisions to applicants due to the community grant provisions under the Caretaker policy may financially disadvantage applicants and discourage other businesses from implementing the switch from single-use plastics to compostable products or utilise a food organics bin service.
55. It is important for city businesses, particularly within the retail and hospitality sectors, that programs and initiatives that support events to drive people into the city are continued throughout the year. This is particularly important as many city businesses continue to be affected by a decrease in city patronage due to COVID-19 impacts.
56. Event organisers seek confirmed funding commitments in a timely manner to assist with decision making and event preparations. Being unable to provide a commitment for the duration of the election period could jeopardise the opportunity for new and expansion of existing events within the city during this current financial year.

DATA AND SUPPORTING INFORMATION

Link 1 - City of Adelaide Caretaker Policy

ATTACHMENTS

Nil

- END OF REPORT -