

Strategic Outcome Supported: 11 – Strong, visionary leadership

1. Policy Objective

- 1.1. The objective of this policy is to ensure Council avoids making major decisions, prior to an election, that would bind an incoming Council, prevent the use of public resources in ways that are seen as advantageous or disadvantageous to elected members seeking re-election or new candidates; and recognising the requirement for the Shire's administration to act impartially in relation to all candidates.

2. Policy Scope

- 2.1. The discretionary policy applies to Council Members and employees during a 'Caretaker Period' relevant to:
 - a. Decisions made by the Council;
 - b. Decisions made under delegated authority;
 - c. Decisions made administratively;
 - d. Promotional materials published by the Shire;
 - e. Discretionary community consultation;
 - f. Events and functions, held by the Shire or other organisations;
 - g. Use of the Shire's resources; and
 - h. Access to information held by the Shire.
- 2.2. Whilst electoral candidates that are not sitting Elected Members cannot be compelled to comply with a policy of the Council, such candidates will be made aware of this policy and encouraged to cooperate with its implementation.

3. Policy Definitions

- 3.1. **The Act** means *Local Government Act 1995*.
- 3.2. **CEO** means Chief Executive Officer, Shire of Donnybrook Balingup.
- 3.3. **Caretaker Period** means the period of time when the caretaker practices are in place prior to the election. The caretaker practices will apply from the close of nominations (37 days prior to the Election Day – Section 4.49 (a) of the Act) until 6.00pm on Election Day.
- 3.4. **Election Day** means the day fixed under the Act for the holding of any poll needed for an election but excludes an extraordinary election other than an extraordinary election to elect a new Shire President.
- 3.5. **Electoral Material** means any advertisement, handbill, pamphlet, notice, letter, social media post or article that is intended or calculated to affect the result in an election but does not include:

- a. An advertisement in a newspaper announcing the holding of a meeting (Section 4.87 (3) of the Act);
 - b. Any materials exempted under Regulation 78 of the *Local Government (Elections) Regulations 1997*; and
 - c. Any materials produced by the Shire 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.
- 3.6. **Extraordinary Circumstances** means a situation that requires a major policy decision of the Council because:
- a. In the CEO's opinion, the urgency of the issue is such that it cannot wait until after the election;
 - b. Of the possibility of legal and/or financial repercussions if a decision is deferred; or
 - c. In the CEO's opinion, it is in the best interests of the Council and/or the Shire for the decision to be made as soon as possible.
- 3.7. **Major Policy Decision** means any:
- a. Decisions relating to the employment, termination or remuneration of the CEO or any other designated senior officer, other than a decision to appoint an Acting CEO, or suspend the current CEO (in accordance with the terms of their contract), pending the election;
 - b. Decisions relating to the Shire entering into a sponsorship arrangement with a total Shire contribution that would constitute substantial expenditure unless that sponsorship arrangement has previously been granted "in principle" support by the Council and sufficient funds have been included in the Council's annual budget to support the project;
 - c. Decisions relating to the Shire entering into the disposition of property or a commercial enterprise as defined by Sections 3.58 and 3.59 of the Act;
 - d. Decisions that would commit the Shire to substantial expenditure or actions that, in the CEO's opinion, are significant, such as that which might be brought about through a Notice of Motion by an Elected Member;
 - e. Decisions that, in the CEO's opinion, will have a significant impact on the Shire of Donnybrook Balingup or the community; and
 - f. Reports requested or initiated by an Elected Member, candidate or member of the public that, in the CEO's opinion could, be perceived within the general community as an electoral issue and has the potential to call into question whether decisions are soundly based and in the best interests of the community.

- 3.8. **Public Consultation** means a process which involves an invitation to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy but does not include consultation required to be undertaken in order to comply with a written law.
- 3.9. **Shire** means the Shire of Donnybrook Balingup.
- 3.10. **Substantial Expenditure** means expenditure that exceeds 0.1% of the Shire's annual budgeted revenue (inclusive of GST) in the relevant financial year.

4. Policy Statements

Scheduling Consideration of Major Policy Decisions

- 4.1. So far as is reasonably practicable, the CEO should avoid scheduling major policy decisions for consideration during a Caretaker Period, and instead ensure that such decisions are either:
 - a. Considered by the Council prior to the Caretaker Period; or
 - b. Scheduled for determination by the incoming Council.
- 4.2. Where extraordinary circumstances prevail, the CEO may submit a major policy decision to the Council (refer to clause 4.5).

Decisions made prior to Caretaker Period

- 4.3. This Policy only applies to decisions made during a Caretaker Period, not the announcement of decisions made prior to the Caretaker Period. Whilst announcements of earlier decisions may be made during a Caretaker Period, as far as practicable any such announcements should be made before the Caretaker Period begins or after it has concluded.

Role of the CEO in Implementing Caretaker Practices

- 4.4. The role of the CEO in implementing the caretaker practices outlined in this policy is as follows:
 - a. The CEO will ensure as far as possible, that all Elected Members and Shire employees are aware of this policy and practices at least 30 days prior to the start of the Caretaker Period;
 - b. The CEO will ensure, as far as possible, that any major policy or significant decisions required to be made by the Council are scheduled for Council resolution prior to the Caretaker Period or deferred where possible for determination by the incoming Council;
 - c. The CEO will endeavour to make sure all announcements regarding decisions made by the Council, prior to the Caretaker Period, are publicised prior to the Caretaker Period; and
 - d. The CEO will provide guidelines for all relevant Shire employees on the role and responsibilities of shire employees in the implementation of this policy.

Extraordinary Circumstances Requiring Exemption

- 4.5. Despite clause 4.1, the CEO may, where extraordinary circumstances exist, permit a matter defined as a 'major policy decision' to be submitted to the Council for determination during the Caretaker Period.

Appointment or Removal of the CEO

- 4.6. Whilst clause 3.7 a. above establishes that a CEO may not be appointed or dismissed during a Caretaker Period, the Council may, where the substantive officer is on leave, appoint an Acting CEO, or in the case of an emergency, suspend the current CEO (in accordance with the terms of their contract) and appoint a person to act in the position of CEO, pending the election, after which date a permanent decision can be made.

Inclusion of Caretaker Statement

- 4.7. To assist the Council to comply with its commitment to appropriate decision making during the Caretaker Period, a Caretaker Statement will be included in each report submitted to the Council where the Council's decision would, or could, be a Major Policy Decision. The Caretaker Statement will state:
- a. *"The decision the Council may make in relation to this item could constitute a 'Major Policy Decision' within the context of the Shire of Donnybrook Balingup Caretaker Policy, however, an exemption should be made because, (insert the circumstances for making the exemption)".*

Prohibition

- 4.8. It is prohibited under this policy for public consultation to be undertaken during the Caretaker Period (either new consultation or existing) on an issue which, in the CEO's opinion, could be perceived as intended or calculated to affect the result of an election, unless authorised by the CEO.
- 4.9. This Policy does not prevent any mandatory public consultation required by the Act or any other relevant Act which is required to be undertaken to enable the Shire to fulfil its functions.

Approval for Public Consultation

- 4.10. Given the prohibition under clause 4.8 of this policy, the Council should not commission or approve any public consultation where it is likely that such consultation will continue into the Caretaker Period.
- 4.11. Where public consultation is approved to occur during the Caretaker Period, the results of that consultation will not be reported to the Council until after the Caretaker Period, except where otherwise approved by the CEO or necessary for the performance of the Shire's functions as prescribed in Act or any other relevant Act.

Public Events Hosted by External Bodies

- 4.12. Elected Members may continue to attend events and functions hosted by external bodies during the Caretaker Period.

Shire Organised Civic Events/Functions

- 4.13. Events and/or functions organised by the Shire and held during the Caretaker Period will be limited to only those that the CEO considers essential to the operation of the Shire and should not in any way be associated with any issues that in the CEO's opinion, are considered relevant to, or likely to influence the outcome of, an election.
- 4.14. All known candidates are to be invited to civic events/functions organised by the Shire during the Caretaker Period.

Addresses by Elected Members

- 4.15. Excluding the President and Deputy President fulfilling their functions as prescribed by sections 2.8 and 2.9 of the Act, respectively, Elected Members that are also candidates should not, without the prior approval of the CEO, be permitted to make speeches or addresses at events/functions organised or sponsored by the Shire during the Caretaker Period.

Use of Shire Resources

- 4.16. The Code of Conduct for Council Members, Committee Members and Candidates and the *Local Government (Model Code of Conduct) Regulations 2021* provide that the Shire's resources are only to be utilised for authorised activities (for example - no use of employees for personal tasks or no use of equipment, stationery, or hospitality for non-Council business). This includes the use of resources for electoral purposes. It should be noted that the prohibition on the use of the Shire's resources for electoral purposes is not restricted to the Caretaker Period.
- 4.17. The Shire's employees must not be asked to undertake any tasks connected directly or indirectly with an election campaign and should avoid assisting Elected Members in ways that could create a perception that they are being used for electoral purposes. In any circumstances where the use of Shire resources might be construed as being related to a candidate's election campaign, advice is to be sought from the CEO.

Electoral Information and Assistance

- 4.18. All candidates will have equal rights to access public information, such as the electoral rolls (draft or past rolls), monthly enrolment details, and information relevant to their election campaigns from the Shire administration.
- 4.19. Any assistance and advice provided to candidates as part of the conduct of the Council election will be provided equally to all candidates.

Media Advice

- 4.20. Any requests for media advice or assistance from Elected Members during the Caretaker Period will be referred to the CEO. No media advice will be provided in relation to election issues or in regard to publicity that involves specific Elected Members. If satisfied that advice sought by an Elected Member during the Caretaker Period does not relate to the election or publicity involving any specific Elected Member(s), the CEO may authorise the provision of a response to such a request.

Publicity Campaigns

- 4.21. During the Caretaker Period, publicity campaigns, other than for the purpose of conducting (and promoting) the election will be avoided wherever possible. Where a publicity campaign is deemed necessary for a Shire activity, it must be approved by the CEO. In any event, the Shire's publicity during the Caretaker Period will be restricted to communicating normal Shire activities and initiatives.

Election Process Enquiries

- 4.22. All election process enquiries from candidates, whether current Elected Members or not, will be directed to the Returning Officer or, where the matter is outside of the responsibilities of the Returning Officer, to the CEO.

5. Delegation and Authorisation

- 5.1. Nil.

6. Legislation

- 6.1. *Local Government Act 1995*
- 6.2. *Local Government (Elections) Regulations 1997*
- 6.3. *Local Government (Model Code of Conduct) Regulations 2021*

7. Version Control – Governance

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Policy Version Details:				
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1	<i>Initial adoption of procedure</i>	23/08/2017	-	-
2	<ul style="list-style-type: none"> Removed policy number 1.18 and added new policy ID; and Add a scope and definitions for ‘the Act’ and ‘CEO’; and Changed the word ‘staff’ to ‘shire employees’, changed ‘the caretaker Policy’ to ‘this policy’, changed ‘The Shire’s Code of Conduct and the Local Government (Rules of Conduct) Regulations 2007’ to ‘The Code of Conduct for Council Members, Committee Members and Candidates and the Local Government (Code of Conduct Regulations 2021 under the heading Use of Shire Resources; and Updated references to other clause numbers within the policy; and Removed section 17. Media Attention, as it’s covered in the Code of Conduct Div 4 Sec 17; and Removed Local Government (Rules of Conduct) Regulations 2007; and Added Local Government (Model Code of Conduct) Regulations 2021	21/12/2021	213/21	NPP7990
3	<ul style="list-style-type: none"> Reformatted to new template; and Updated 6.3 from Local Government (Code of Conduct) 2021 Regulations 2021 to Local Government (Model Code of Conduct) Regulations 2021. 	23/10/2024	187/10-24	NPP11932