

# Caretaker Provisions and Local Government Elections

Shire of Donnybrook Balingup Council Policy EM/CP-6



Strategic Outcome Supported: 12 – A well respected, professionally run organisation

## OBJECTIVE

1. The objective of this policy is to:
  - a. Ensure the Shire avoids making decisions classified as Significant Acts under the Local Government Act 1995 prior to an election, that would bind an incoming Council;
  - b. Prevent the use of public resources in ways that are seen as advantageous or disadvantageous to Elected Members seeking re-election, or new candidates seeking election; and
  - c. Recognise the requirement for the Shire's administration to act impartially in relation to all candidates.

## SCOPE

2. This policy applies to all Elected Members and Shire employees during a Caretaker Period.
3. Whilst electoral candidates that are not current 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.

## DEFINITIONS

4. **Act** means the *Local Government Act 1995*.
5. **Caretaker Period** means the period defined in section 1.4A(1) of the Act, or any successor provision, during which caretaker practices apply for a relevant election.
6. **CEO** means Chief Executive Officer, Shire of Donnybrook Balingup.
7. **Elected Member** means a person who holds the office of Councillor on the Shire Council in accordance with the Act.
8. **Election Day** means a day fixed under the Act for the holding of any poll needed for an election.
9. **Electoral Material** means any advertisement, handbill, pamphlet, notice, letter, article or social media post that is intended or calculated to affect the result of an election, but does not include:
  - a. An advertisement in a newspaper announcing the holding of a meeting in accordance with the Act;
  - b. Any materials exempted under 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.
10. **Extraordinary Circumstances** means a situation that requires a decision of the Council during the caretaker period because:
- a. The Shire's decision to do the significant act was made before the caretaker period; and
  - b. Any prescribed requirements are met; or
  - c. The Shire has received authorisation from the Departmental CEO to do the significant Act; or
  - d. There is provision in the Act for the Shire to undertake the significant act.
11. **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 relevant legislation.
12. **Returning Officer** means a person appointed by the Electoral Commissioner in accordance with the Act.
13. **Significant Act** means any:
- a. Making a local law, including making a local law to amend or repeal a local law;
  - b. Entering into, or renewing or terminating, the contract of employment of the CEO or of a senior employee;
  - c. Entering into a major land transaction;
  - d. Entering into a land transaction that is preparatory to entry into a major land transaction;
  - e. Commencing a major trading undertaking;
  - f. Entering into a contract, or other agreement or arrangement, in prescribed circumstances;
  - g. Inviting tenders in prescribed circumstances;
  - h. Deciding to do anything referred to in clauses 13(a) to 13(g) above;
  - i. An act done under written law or otherwise that is a prescribed act.
14. **Shire** means the Shire of Donnybrook Balingup.

## POLICY STATEMENTS

### Role of the CEO in Implementing Caretaker Practices

15. 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 the roles and responsibilities for its implementation at least 30 days prior to the start of a Caretaker Period.

### Decisions made prior to Caretaker Period

16. This Policy only applies to decisions made during a Caretaker Period, not the announcement of decisions made prior to a 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.

### Inclusion of Caretaker Statement

17. To assist the Council to comply with its commitment to appropriate decision making during the Caretaker Period, a Caretaker Statement must be included in each report submitted to the Council where the Council's decision would, or could, be considered a Significant Act. The Caretaker Statement will state:
  - a. *"The decision the Council may make in relation to this item could constitute a 'Significant Act' within the context of the Local Government Act 1995, however, its considered an extraordinary circumstance because, (insert the circumstances)".*
18. This Policy does not prevent any mandatory public consultation required by the Act, or any other relevant legislation, which is required to be undertaken to enable the Shire to fulfil its duties.

### Events and Functions

19. Elected Members may continue to attend events and functions hosted by external bodies during a Caretaker Period.
20. 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.
21. All known electoral candidates are to be invited to civic events and functions organised by the Shire during a Caretaker Period.
22. Excluding the President and Deputy President fulfilling their functions as prescribed by the Act, Elected Members that are also candidates should not, without the prior approval of the CEO, be permitted to make speeches or addresses at events and functions organised, or sponsored, by the Shire during a Caretaker Period.

## Electoral Information and Assistance

23. 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 a Caretaker Period.
24. 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.
25. All candidates will have equal rights to access public information, such as the electoral rolls, monthly enrolment details and information relevant to their election campaigns from the Shire administration, where required by legislation.
26. Any assistance and advice provided to candidates as part of the conduct of an election will be provided equally to all candidates.
27. 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.

## Media Advice and Public Campaigns

28. 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 a Elected Member during a 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.
29. During a 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 a Caretaker Period will be restricted to communicating normal Shire activities and initiatives.

## DELEGATION AND AUTHORISATION

30. Nil

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## LEGISLATION

- Local Government Act 1995
- Local Government (Elections) Regulations 1997
- Local Government (Model Code of Conduct) Regulations 2021

## APPENDIX

31. Nil.

## GOVERNANCE

### Related Policy(s):

- Council Policy EXE/CP-8 Policy Framework
- Council Policy EXE/CP-9 Communication and Social Media
- Code of Conduct for Elected Member Members, Committee Members and Candidates
- Code of Conduct for Employees, Contractors and Volunteers

### Related Procedure(s):

- Nil.

### Revision Requirements and Version Control:

Responsible Department(s):		Executive		
Review to be conducted by:		Executive Manager Corporate Services		
Revision Frequency:		<input type="checkbox"/> Annual (1yr)	<input checked="" type="checkbox"/> Biennial (2yr)	<input type="checkbox"/> Triennial (3yr)
Current Version Date:		23/07/2025		Next Due: 07/2027
Policy Version Details and Information:				
#:	Synopsis:	Date:	Reference:	Record Number:
1	<ul style="list-style-type: none"><li>Initial adoption of Council Policy 1.27 Caretaker.</li></ul>	23/08/2017	OCM Minutes	NAM3277
2	<ul style="list-style-type: none"><li>Updated policy number;</li><li>Formatting amendments;</li><li>Expanded scope and definitions; and</li><li>Updated legislative references.</li></ul>	21/12/2021	213/21	NPP7990
3	<ul style="list-style-type: none"><li>Reformatted to new template; and</li><li>Updated legislative references.</li></ul>	23/10/2024	187/10-24	NPP11932

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	<ul style="list-style-type: none"><li>• Reformatted to current template;</li><li>• Significant amendments to Definitions and Policy Statements to reflect legislative changes; and</li><li>• Minor edits including syntax.</li></ul>			
4		23/07/2025	140/07-25	NPP16103

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