

Shire of Mundaring

POLICY

ELECTIONS - CARETAKER PERIOD

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Amended:		Date:	
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Policy Ref:	OR-12 Code of Conduct	Delegation Ref:	N/A
Statute Ref:	<i>Local Government Act 1995 Part 4</i> <i>Local Government (Elections) Regulations 1996</i> <i>Local Government (Model Code of Conduct) Regulations 2021</i>		
Local Law Ref:	N/A		

PURPOSE

The purpose of this policy is to -

1. prevent the Council of the Shire of Mundaring, prior to an election, making major decisions that would bind an incoming Council;
2. prevent Elected Members from using public resources in ways that are seen as advantageous or detrimental to sitting Elected Members who are seeking re-election; and
3. ensure that Shire of Mundaring employees act impartially in relation to all candidates.

APPLICATION

This Policy applies to Elected Members and employees of Shire of Mundaring during a "Caretaker Period" (see below for definition) to cover –

- a) decisions that are made by Council;
- b) materials published by the Shire;
- c) attendance at and participation in functions and events;
- d) use of the Shire's resources; and
- e) access to information held by the Shire.

Whilst electoral candidates who are not sitting Elected Members cannot be compelled to comply with a Council policy, such candidates will be made aware of this Caretaker Period Policy and encouraged to cooperate with its implementation.

POLICY

1. DEFINITIONS

‘Caretaker Period’ means the period of time prior to a local government election when the caretaker practices are in place. The caretaker practices will apply from the close of nominations being 4.00 pm 37 days prior to the Election Day in accordance with section 4.49(a) of the *Local Government Act 1995* until 6.00 pm on Election Day.

‘Election Day’ means the day fixed under the *Local Government Act 1995* for the holding of any poll needed for an election.

‘Electoral Material’ means any advertisement, handbill, pamphlet, notice, letter 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 *Local Government Act 1995*;
- b) any materials exempted under regulation 78 of the *Local Government (Elections) Regulations 1997*;
- 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.

‘Extraordinary Circumstances’ means a situation that requires a major policy decision by Council because of the possibility of legal and/or financial repercussions if a decision is deferred or because of statutory timeframe requirements.

‘Major Policy Decision’ means any –

- a) Decision relating to the employment, termination or remuneration of the Chief Executive Officer other than a decision to appoint an Acting Chief Executive Officer or, in the case of an emergency, suspend the current Chief Executive Officer (in accordance with the terms of their contract) and appoint a person to act in that position pending the election, after which date a permanent decision can be made.
- b) Decision relating to the Shire entering into a sponsorship arrangement with a total Shire contribution value exceeding \$10,000 (excluding GST) and not provided for in the adopted budget.
- c) Decision relating to the Shire entering into a commercial enterprise as defined by section 3.59 of the *Local Government Act 1995*.
- d) Decision that would commit the Shire to substantial expenditure or actions that, in the Chief Executive Officer’s opinion, are significant, such as that which might be brought about through a Notice of Motion by an Elected Member.
- e) Decision that, in the Chief Executive Officer’s opinion, will have a significant impact on Shire of Mundaring or the community.
- f) Report requested or initiated by an Elected Member, candidate or member of the public that, in the Chief Executive Officer’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.

‘Public Consultation’ means a process which involves an invitation to individuals, groups, 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.

‘Substantial Expenditure’ means expenditure that exceeds 0.1% of the Shire’s annual budgeted revenue (excluding GST) in the relevant financial year.

2. IMPLEMENTATION OF CARETAKER PRACTICES

2.1 Scheduling Consideration of Major Policy Decisions

So far as is reasonably practicable, the Chief Executive Officer should avoid scheduling major policy decisions for consideration during a Caretaker Period and instead ensure that such decisions are either –

- a) Considered by Council prior to the Caretaker Period; or
- b) Scheduled for determination by the incoming Council.

Where extraordinary circumstances (refer to definition) exist the Chief Executive Officer may submit a major policy decision to Council.

2.2 Decisions Made Prior to a Caretaker Period

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.

2.3 Role of the Chief Executive Officer in Implementing Caretaker Practices

The role of the Chief Executive Officer in implementing the caretaker practices outlined in this policy is as follows –

- a) The Chief Executive Officer will ensure, as far as possible, that all Elected Members and employees are aware of the Caretaker Period Policy and practices at least 30 days prior to the start of the Caretaker Period.
- b) The Chief Executive Officer will ensure, as far as possible, that any major policy or significant decisions required to be made by Council are scheduled for Council resolution prior to the Caretaker Period or deferred for determination by the incoming Council.
- c) The Chief Executive Officer will endeavour to make sure all announcements regarding decisions made by Council prior to the Caretaker Period are publicised prior to the Caretaker Period.

2.4 Caretaker Statement

To assist Council to comply with its commitment to appropriate decision making during the Caretaker Period, the following Caretaker Statement will be included in each report submitted to Council where Council’s decision would or could be a Major Policy Decision:

“The recommended decision is a ‘Major Policy Decision’ within the context of Policy OR-22 Elections – Caretaker Period Policy, however an exemption should be made

because of the possibility of legal and/or financial repercussions if a decision is referred or because of statutory timeframe requirements”.

2.5 Elected Members Interactions

Elected Members should take particular care when –

- a) Considering planning matters before Council in its role as a responsible authority under the *Planning and Development Act 2005*. It should be noted that this Policy does not apply to items referred to the Joint Development Assessment Panel;
- b) Undertaking a consultation or advocacy role on behalf of members of the community;
- c) Communicating on behalf of Council with State or Federal Government entities; and
- d) Receiving information in their role of Elected Member. This information is not to be used for campaigning purposes, except to the extent that the information is already in the public domain.

3. SHIRE OF MUNDARING PUBLICATIONS

3.1 Shire of Mundaring Website

During the Caretaker Period the Shire’s website will not contain any material which is precluded by this Policy. Any references to the election will only relate to the election process. Information about Elected Members will be restricted to names, contact details, titles, membership of special committees and other bodies to which they have been appointed by Council. This clause does not apply to information published prior to the Caretaker Period.

3.2 Prohibition on Publishing Electoral Material

The Shire shall not print, publish or distribute or cause, permit or authorise others to print, publish or distribute on behalf of the Shire any advertisement, handbill, pamphlet or notice that contains ‘electoral material’ during the Caretaker Period.

3.3 Electoral Material Relevant to Prohibition

Without limiting the general definition of ‘Electoral Material’ above, material will be considered to be intended or likely to affect voting in the election if it contains an express or implicit reference to or comment on –

- a) The election; or
- b) A candidate in the election; or
- c) An issue submitted to or otherwise before the voters in connection with the election.

3.4 Candidate and/or Elected Member Publications

Elected Members and/or candidates are permitted to publish campaign material on their own behalf, but cannot claim for that material to be originated from or authorised by the Shire.

3.5 Election Announcements

This Policy does not prevent publications by the Shire which merely announce the holding of the election or relate only to the election process itself.

3.6 Social Media

During the Caretaker Period the Shire's social media accounts, including but not limited to Facebook, Twitter, Instagram, YouTube and LinkedIn will not contain any material that is precluded by this Policy. Any reference to the election will only relate to the election process.

3.7 Shire of Mundaring Business Cards

During the Caretaker Period Elected Members shall ensure that their Shire business cards are used only for purposes associated with the normal role of an Elected Member in servicing their electorate. Elected Members' business cards shall not be used in a manner that could be perceived as an electoral purpose. It should be noted that this prohibition on the use of Shire resources for electoral purposes is not restricted to the Caretaker Period.

4. PUBLIC CONSULTATION DURING THE CARETAKER PERIOD

4.1 Prohibition

During the Caretaker Period it is prohibited under this Policy for public consultation to be undertaken on an issue which, in the Chief Executive Officer's opinion, could be perceived as intended or calculated to affect the result of an election.

This Policy does not prevent any statutory public consultation, required by the *Local Government Act 1995* or any other legislation, to be undertaken to enable the Shire to fulfil its functions.

5. ATTENDANCE AND PARTICIPATION AT EVENTS OR FUNCTIONS

5.1 Public Events and Functions Hosted by External Bodies

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

5.2 Shire Organised Civic Events or Functions

Events and/or functions organized by the Shire and scheduled during the Caretaker Period will be limited to only those essential to the operation of the Shire and should not in any way be associated with any issues that, in the Chief Executive Officer's opinion, are considered relevant to or likely to influence the outcome of an election unless extraordinary circumstances apply (e.g. major funding announcements).

Recurring annual community events scheduled to take place during the Caretaker Period will proceed, but there should be no formal role for Elected Members at these events.

5.3 Delegates to Community and Advisory Groups

Elected Members appointed to community groups and other external organisations as representatives of the Shire shall not use their attendance at meetings of these groups to either recruit assistance with electoral campaigning or to promote their personal or other candidates' electoral campaign.

6. USE OF SHIRE OF MUNDARING RESOURCES

The Shire's Code of Conduct and the *Local Government (Model Code of Conduct) Regulations 2021* provide that Shire resources are only to be utilised for authorised activities. For example the use of employees for personal tasks and the use of equipment, stationery or hospitality for non-Council business are prohibited. This includes the use of resources for electoral purposes. It should be noted that the prohibition on use of the Shire's resources for electoral purposes is not restricted to the Caretaker Period.

Shire 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 Chief Executive Officer.

7. ACCESS TO COUNCIL INFORMATION

7.1 Elected Member Access to Information

During the Caretaker Period Elected Members are able to access Council information relevant to the performance of their functions as Elected Member.

However this access to information should be exercised with caution and be limited to matters that Council is dealing with. Any Council information so accessed must not be used for election purposes.

7.2 Electoral Information and Assistance

All candidates will have equal rights to access public information from the Shire's administration, such as the electoral rolls and information relevant to their election campaign.

Any assistance and advice provided to candidates as part of the conduct of the election will be provided equally to all candidates

7.3 Media Advice

Any requests for media advice or assistance from Elected Members during the Caretaker Period will be referred to the Chief Executive Officer.

No media advice will be provided in relation to election issues or in regard to publicity that involves any individual Elected Member(s).

7.4 Publicity Campaigns

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 Chief Executive Officer.

In any event, the Shire's publicity during the Caretaker Period will be restricted to communicating normal Shire activities and initiatives.

7.5 Media Attention

Elected Members will not use or access Shire employees or resources to gain media attention in support of their or any candidate's election campaign.

7.6 Election Process Enquiries

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 Chief Executive Officer.