

Caretaker Policy



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| Responsible Manager | Manager Governance & Policy |
| Other key internal stakeholders | |
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| Legal requirement | Section 91A of the Local Government (Elections) Act 1999 requires Council to prepare and adopt a Caretaker Policy. |
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1. PURPOSE

The introduction of mandatory Caretaker provisions in the Local Government (Elections) Act 1999 is the main reason for the introduction of this Policy. This Policy is to help establish the conduct of Council, its Elected Members and employees during an Election Period. This Election Period is commonly referred to as a caretaker period.

2. POLICY

This Policy aims to implement a set of rules to apply to Council, Elected Members and Council employees for local government elections similar to the caretaker conventions practiced by the State and Commonwealth Governments. Council acknowledges that caretaker conventions are generally regarded as necessary for the promotion of transparent and accountable government during an Election Period.

This Policy applies during an Election Period of Council for the following types of conduct:

- a. Decisions that are made by Council
- b. Materials published by Council and / or Elected Members
- c. Public consultation
- d. Attendance and participation in functions and events
- e. Use of Council resources
- f. Access to Council information
- g. Media services matters
- h. Responsibilities of Council employees
- i. Equity in assistance to candidates
- j. Avoiding actions and decisions which could be perceived as influencing voters or having a significant impact on the incoming Council.

Council will assume a caretaker mode to avoid actions and decisions which could be perceived as intended to affect the results of an election or have a significant impact on the incoming Council.

2.1 Council decisions

2.1.1 Application of clause

This clause applies to decisions of Council, a Committee or a delegate of Council.

2.1.2 Scheduling consideration of major policy decisions

So far as is reasonably practicable, the CEO should avoid scheduling major policy decisions and community grant applications for consideration during an Election Period, and instead ensure that such decisions are either:

- a. Considered by Council prior to the Election Period
- b. Scheduled for determination by the incoming Council.

In the context of this Policy a major policy decision includes any decision:

- a. To spend a material amount of unbudgeted monies
- b. To conduct unplanned public consultation
- c. To endorse a new policy
- d. To dispose of Council land other than to finalise a matter that has previously been before Council
- e. To approve community grants
- f. To progress any matter which has been identified as an election issue
- g. Any other issue that is considered a major policy decision by the CEO that is not a Designated Decision (see heading 'Prohibited Decisions during an Election Period').

2.1.3 Prohibited Decisions during an Election Period

The following table outlines those decisions which are expressly restricted by the Local Government Act 1999, Local Government (Elections) Act 1999 and this Policy.

| Designated Decisions | |
|-----------------------------|--|
| a. | A decision relating to the employment or remuneration of the CEO, (other than a decision to appoint an acting CEO in the case of an emergency or resignation or to suspend the CEO for serious and wilful misconduct). |
| b. | A decision to terminate the appointment of the CEO. |
| c. | A decision to enter into a contract, arrangement or understanding (other than a Prescribed Contract) 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. |
| d. | A decision allowing the use of Council resources for the advantage of a particular candidate or group of candidates (other than a decision that allows the equal use of Council resources by all candidates for election). |

2.1.4 Exclusions from Designated Decisions

The following kinds of decisions are excluded from the definition of 'Designated Decision' under Regulation 12 of the Local Government (Elections) Regulations 2010 from the definition of a Designated Decision:

| Exclusions from Designated Decisions | |
|---|---|
| a. | Carrying out of works in response to an emergency or disaster within the meaning of the <i>Emergency Management Act 2004</i> , or under section 298 of the <i>Local Government Act 1999</i> . |
| b. | 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. |

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| c. | The employment of a particular council employee (other than the CEO). |
| d. | 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. |
| e. | A Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the council. |

Where a general election is held in special cases in accordance with section 56 of the Local Government Act 1999, restrictions on activities covered during the Election Period are detailed in section 57 of this Act.

Council notes that the Local Government (Elections) Act 1999 stipulates that any Designated Decision made by the Council during the Election Period without an exemption from the Minister is invalid. Furthermore, it also notes that the Council is liable to pay compensation to any person who suffers loss or damage as a result of acting in good faith in reliance on such an invalid Designated Decision.

Council, if faced with extraordinary circumstances, may apply in writing to the Minister for an exemption. If the Minister chooses to grant an exemption it may be subject to any conditions or limitations that the Minister considers appropriate.

2.1.5 Considerations for the CEO in giving approval

In the case of a major policy decision referred to the CEO which is not expressly prohibited above during an Election Period, in deciding whether to give approval, the CEO should have regard to all of the circumstances, including but not limited to:

- a. Whether the decision is significant
- b. The urgency of the issue (i.e. can it wait until after the election?)
- c. The possibility of financial repercussions if it is deferred
- d. Whether the decision is likely to be controversial
- e. The requirement of expenditure of unbudgeted funds
- f. If the matter is the completion of an activity already commenced and endorsed by Council
- g. If the matter requires community engagement
- h. If there are any relevant statutory obligations or timeframes
- i. The best interests of Council.

The CEO determines if a matter is major or significant.

2.1.6 Decisions made prior to an Election Period

This Policy only applies to actual decisions made during an Election Period, not the announcement of decisions made prior to the Election Period. While announcements of earlier decisions may be made during an Election Period, as far as reasonably practicable any such announcements should be made before the Election Period begins.

2.2 Council publications during an Election Period

2.2.1 Prohibition on publishing certain materials during an Election Period

Subject to the operation of Section 12(b) of the Local Government (Elections) Act 1999 Council may not:

- a. Print, publish or distribute
- b. Cause, permit or authorise others to print, publish or distribute on behalf of Council

any advertisement, handbill, poster, pamphlet or notice that contains Electoral Material during an Election Period.

Elected Member articles, messaging, commentary and the like are not to be included in Council's Gully Grapevine and other corporate publications during and immediately before the Election Period commences i.e. one month prior.

Elected Members are, however, permitted to publish campaign material on their own behalf and at their own expense, but cannot claim any material to be originating from or authorised by Council or imply as such (e.g. by the use of Council logos).

This Policy does not prevent publications by Council which merely announce the holding of an election or relate only to the election process itself for the purposes of Section 12(b) of the Local Government (Elections) Act 1999 or otherwise.

(Note: publications include print, electronic, digital and web based materials)

2.2.2 Council website

During an Election Period, new material which is precluded by this Policy will not be placed on Council's website. Any information which refers to the election will only relate to the election process by way of information, education or publicity. Information about Elected Members will be restricted to names, titles, contact details, portrait photographs, and membership of committees and other bodies to which they have been appointed by Council.

2.2.3 Other council publications

For any Council or legislated publications, such as the Annual Report, that are required to be published during an Election Period, the content contained within them regarding Elected Members will be restricted to that required by the Local Government Act 1999 and Regulations.

Council publications produced before an Election Period containing material which might be construed as Electoral Material are not to be published during the Election Period, however, they may be made available to members of the public on request.

2.3 Public consultation during an Election Period

It is contrary to this Policy for Discretionary Public Consultation to be undertaken during an Election Period (either new consultation or existing) on an issue which is contentious or has the potential to become contentious unless prior approval is given by Council and / or the CEO as appropriate.

This Policy does not prevent any mandatory public consultation required by the Local Government Act 1999 or any other Act which is required to be undertaken to enable Council to fulfil its functions in relation to any matter. It is not the intention of this Policy to limit any public notification requirements under the Development Act 1993.

2.3.1 Approval for public consultation

Where public consultation is approved to occur during an Election Period, the results of that consultation will not be reported to Council until after the Election Period, except where otherwise approved by the CEO or it is necessary for the performance of functions as set out above.

2.3.2 Council facilitated community meetings

Council facilitated community meetings will not be held during an Election Period. It is not the intention of this Policy to restrict any routine and special meetings of Council or Committees.

2.4 Attendance at events and functions during an Election Period

2.4.1 Events staged by external bodies

Elected Members may continue to attend events and functions staged by external bodies during an Election Period.

2.4.2 Council events and functions

Council organised events and functions held during an Election Period will be reduced to only those essential to the operation of Council, in line with the normal business practices of Council, e.g. citizenship ceremonies, opening of recently completed capital projects.

2.4.3 Addresses by Elected Members

Elected Members may not give speeches or keynote addresses at any event, including Council organised or sponsored events and functions, or externally organised events and functions during an Election Period.

Elected Members may, however, make brief and factual welcome speeches at Council organised or sponsored events and functions, as well as externally organised events and functions during an Election Period in line with the normal business practices of Council, e.g. citizenship ceremonies, opening of recently completed capital projects.

2.4.4 Publication of promotional material

In preparing any material concerning a Council organised or sponsored function or event which will be published or distributed during an Election Period, such preparation must be consistent with the heading 'Council publications during an Election Period' in this Policy.

2.5 Council resources

Council is to ensure that due propriety is observed in the use of Council resources, and Council employees are required to exercise appropriate discretion in this regard. Council employees should avoid assisting Elected Members in ways that are, or could create a perception that they are, being used for electoral purposes. In any circumstances where the use of Council resources might be construed as being related to a candidate's election campaign, the incident must be reported to and advice must be sought from the CEO.

Council resources incorporating personnel, goods, equipment, services, information and opportunities and may include:

- a. Materials published by Council
- b. Attendance and participation at functions and events
- c. Access to Council information
- d. Media services.

Council resources should be used exclusively for normal Council business during an Election Period, and should not be used in connection with an election other than uses strictly relating to the election process.

2.5.1 Access to Council information

During an Election Period, Elected Members continue to have a statutory right to access Council information relevant to the performance of their functions as an Elected Member. This right should be exercised with caution and limited to matters that the Council is dealing with within the objectives and intent of this Policy. Any Council information accessed that is not publicly available must not be used for election purposes.

All candidates have equal rights to access public information relevant to their election campaigns from Council administration. Neither Elected Members nor candidates will be provided information or advice from Council employees that might be perceived to support election campaigns, and there will be transparency in the provision of all information and advice during an Election Period.

2.5.2 Information and briefing material

Information and briefing material prepared or secured by employees for an Elected Member during an Election Period must be necessary to the carrying out of the Elected Member's role and must not be related to election issues or to issues that might be perceived to be of an electoral nature. Queries by Council employees regarding provision of information will be directed to the CEO in the first instance.

2.6 Media

The media may be used to promote Council activities or initiatives, but must not be used in any manner that might favour an individual candidate during an Election Period.

2.6.1 Media advice

Any request for media advice or assistance from Elected Members during an Election 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 an Election 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.

2.6.2 Media releases / spokespersons

Media releases generally will not refer to specific Elected Members. Where it is necessary to identify a spokesperson in relation to an issue and response to media enquiries, it should be business as usual in accordance with Council's Media Policy.

2.6.3 Publicity campaigns

During the Election Period, publicity campaigns, other than for the purpose of conducting the election in accordance with the requirements of section 12(b) of the Local Government (Elections) Act 1999 will be avoided wherever possible. Where a publicity campaign is deemed necessary for a Council activity, it must be approved by the CEO. In any event, Council publicity during an Election Period will be restricted to communicating normal Council activities and initiatives without any variation in form or size to Council's normal practices.

2.6.4 Elected Members

Elected Members will not use their position as an elected representative or their access to Council employees and other Council resources to gain media attention in support of an election campaign.

2.6.5 Council employees

During an Election Period, Council employees must not make any public statement that relates to an election issue unless such statements have been approved by the CEO or otherwise authorised to do so.

2.7 Equity in Assistance to Candidates

Council confirms that all candidates for Council elections will be treated equally.

Council's Code of Practice for Meeting Procedures provides information on candidates speaking in the Public Forum or Deputation section of a meeting.

2.7.1 Candidate assistance and advice

Any assistance and advice provided to candidates as part of the conduct of a Council election will be provided consistently to all candidates.

2.7.2 Election process enquiries

All election process enquiries from candidates, whether current Elected Members or not, will be directed to the nominated Electoral Officers.

2.7.3 Council branding and stationery

Council logos, letterheads, or other Council branding, resources or facilities may not be used for, or linked in any way with, a candidate's election campaign.

2.7.4 Employees

Employees must not be asked to undertake any tasks connected directly or indirectly with an election campaign.

2.7.5 Council facilities and resources

Equipment and facilities provided to Elected Members must not be used for campaigning purposes, e.g. mobile phones, tablets, computers, printers, stationery, email, internet connections.

Reimbursement of expenses for Elected Members during an Election Period is outlined in the Elected Member Support Policy.

2.8 Council Employee Responsibilities during an Election Period

Prior to an Election Period, the CEO will ensure that all Council employees are advised in relation to this Policy.

2.8.1 Correspondence

Correspondence addressed to Elected Members in regards to normal Council business may be answered by the Elected Members but any response must not include election campaign material.

2.8.2 Activities that may affect voting

Council employees must not undertake an activity that may affect voting in the election, except where the activity relates to the election process and is authorised by the CEO.

Council employees must not authorise, use or allocate Council resources for any purpose which may influence voting in the election, except where it only relates to the election process and is authorised by the CEO.

Council employees must not assist Elected Members in ways that are or could create a perception that they are being used for electoral purposes. In any circumstances where the use of Council resources might be construed as being related to a candidate's election campaign, the incident must be reported to and advice sought from the CEO.

2.9 Handling Code of Conduct complaints during an Election Period

Any complaint against an Elected Member who is also a candidate for re-election made under the Code of Conduct for Council Members during an Election Period will not be heard or determined by the Council during that period.

If required, any Code of Conduct complaints will be referred to the relevant agency depending on the nature and seriousness of the complaint.

The CEO, upon receiving a complaint against an Elected Member, who is also a candidate for re-election about conduct specifically in relation to this Policy will refer the complaint for any relevant assessment and investigation in accordance with the Process for Handling Code of Conduct Complaints Against Council Members.

If the complaint is, in the opinion of the External Investigator, not so serious as to warrant urgent determination, consideration of the complaint will be deferred until after the Election Period.

An example of a serious complaint which would warrant urgent determination is where a complaint of a deliberate and wilful breach of this Policy is made, and is supported by sufficient evidence for the External Investigator to be satisfied that the conduct of the Elected Member was not an honest or innocent mistake.

A reminder and a copy of this Policy content will be provided by the CEO to an Elected Member, where a complaint is made in regards to a breach of this Policy (which is deferred until after the Election Period). Council recognises that the Electoral Commissioner has the role of investigating any alleged breach of the Local Government (Election) Act 1999, including alleged illegal practices.

3. DEFINITIONS

For the purposes of this policy the following definitions apply:

CEO

Refers to the Chief Executive Officer (including their delegate) of the City of Tea Tree Gully.

Designated Decision

As defined in Local Government (Elections) Act 1999 and Local Government (Elections) Regulations 2010

Discretionary Public Consultation

Consultation which is not legislatively mandated and is a process which involves an invitation/s to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy.

Elected Members

Includes the Councillors and the Mayor of the City of Tea Tree Gully.

Election Period

The Election Period will be as defined in the Local Government (Elections) Act 1999 (from the close of nominations until the conclusion of the election). For an election that is held in accordance with section 56 of the Local Government Act 1999, this will commence on the date of a declaration under this section that relates to the council and ending on the day on which general elections for the council held pursuant to that section conclude.

Electoral Material

Material (including print, electronic, digital or web material) which is calculated (i.e. intended or likely) to affect voting in a Local Government election. It does not include any materials produced by Council 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. Without limiting the generality of this definition, material will be considered to be intended or likely to affect voting in an election if it contains an express or implicit reference to or comment on:

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

General Election

A local government election held once every four years in accordance with section 5 of the Local Government (Elections) Act 1999 or at a time determined pursuant to section 56 of the Local Government Act 1999.

Prescribed Contract

A contract entered into by Council for the purpose of undertaking road construction or maintenance, or drainage works. Prescribed Contracts allow Council to continue with its core road and drainage infrastructure work unaffected by the Caretaker period.

4. LEGISLATIVE FRAMEWORK

It is a legislative requirement under section 91A of the Local Government (Elections) Act 1999 to adopt a caretaker policy governing the conduct of the council and its employees during the election period for a general election.

This Policy is based on a model policy prepared by the Local Government Association in conjunction with Council's lawyers and the Caretaker policies Guidance Paper No. 4 2010 by Office for State / Local Government Relations (Dept. of Planning and Local Government).

The following legislation applies to this Policy:

Local Government Act 1999

This Policy will also apply to section 57 of this Act, which outlines the restrictions on Council activities subject to a declaration under section 56 (General election to be held in special case).

Local Government (Elections) Act 1999

Section 91A of this Act, sets out the requirements of Council in regard to its conduct during an Election Period. At a minimum, the Caretaker Policy must prohibit the making of a Designated Decision by Council during the Election Period.

Council is required to manage and conduct an election process pursuant to the requirements of the Local Government (Elections) Act 1999.

4.1 Other references

Council's document including:

- a. [Elected Member Support Policy](#)
- b. [Control of Election Signs Policy](#)
- c. [Media Policy](#)

- d. [Fees and Charges Register](#)
- e. [Code of Conduct for Council Members](#)
- f. [Code of Conduct for Council Employees](#)
- g. [Code of Practice for Meeting Procedures](#)

5. STRATEGIC PLAN/POLICY

5.1 Strategic Plan

The following strategic objectives in Council’s Strategic Plan 2025 are the most relevant to this report:

| Objective | Comments |
|---|---|
| Leadership | |
| <i>Leadership and advocacy is focused on the long term interests of the community</i> | Governance deals with how Council defines roles, powers and responsibilities within the organisation with the aim of modelling best practice in local government. |

6. POLICY IMPLEMENTATION

This Policy will be implemented by the Chief Executive Officer or relevant portfolio director and managed in accordance with Council’s scheme of delegations.