



POLICY TITLE: ELECTIONS - CARETAKER PERIOD

FOLDER NUMBER: F2007/00307

POLICY OWNER / DIVISION: General Manager's Division

POLICY OWNER / BRANCH: General Manager

FUNCTION: Elections
Communication/Consultation

RELEVANT LEGISLATION: Local Government Act 1993

POLICY ADOPTION/AMENDMENT DATE: 18 July 2012 **REPORT NUMBER:** CS8/12

REVIEW YEAR: 2015

AMENDMENT HISTORY: 17 February 2010 GM3/10

RELATED POLICIES:

POLICY PURPOSE / OBJECTIVES:

To ensure the activities of the Council of the Shire of Hornsby (Council) and those of Councillors who are candidates, are undertaken in a manner that supports a high standard of integrity during local government election periods.

POLICY STATEMENT:

1 – INTRODUCTION

1.1 Objective

The primary objective of this Policy is to avoid the Council, the General Manager or any other delegate of the Council (other than the Joint Regional Planning Panel) making major decisions, prior to an ordinary election, that would bind an incoming Council, prevent the use of public resources in ways that are seen as advantageous to, or promoting, the sitting Councillors who are seeking re-election, or new candidates, and to ensure that Council's administration acts impartially in relation to candidates for election.

This Policy applies during a 'Caretaker Period' to cover:

- (a) decisions that are made by the Council, the General Manager or any other delegate of the Council (other than the Joint Regional Planning Panel);
- (b) any material that is published by the Council;
- (c) attendance and participation in functions and events;

- (d) the use of the Council's resources;
- (e) access to Council information; and
- (f) media services issues.

1.2 Application

This Caretaker Policy has application to Councillors, electoral candidates and employees of the Council.

1.3 Definitions

'Caretaker Period' means the period of time commencing from the date of the close of the rolls (40 days before election day) and ending on the day the election is declared.

'Election Day' means the day fixed under the Local Government Act 1993 for the holding of an ordinary election.

'Electoral Material' is as defined in clause 356A of the Local Government (General) Regulation 2005 and includes a how-to-vote card, poster or advertisement containing electoral matter, or anything else containing electoral matter.

'Electoral Matter' is as defined in clause 356A of the Local Government (General) Regulation 2005, and includes:

(a) any matter that is intended or calculated or likely to affect or is capable of affecting the result of any election held or to be held or that is intended or calculated or likely to influence or is capable of influencing an elector in relation to the casting of his or her vote at any election; or

(b) the name of a candidate at any election, the name of the party of any such candidate, the name or address of the committee rooms of any such candidate or party, the photograph of any such candidate, and any drawing or printed matter that purports to depict any such candidate or to be a likeness or representation of any such candidate.

'Events and Functions' means gatherings of internal and external stakeholders to discuss, review, acknowledge, communicate, celebrate or promote a program, strategy or issue which is of relevance to the Shire and its stakeholders and may take the form of conferences, workshops, forums, launches, promotional activities and social occasions such as dinners and receptions.

'Major Decision' means:

(a) Entering into any contract or undertaking involving an expenditure or receipt by the Council of an amount equal to or greater than \$150,000 or 1% of Council's revenue from rates in the preceding financial year (whichever is the larger).

(b) Determining a controversial development application, except where a failure to make such a determination would give rise to a deemed refusal, or such a deemed refusal arose before the commencement of the Caretaker Period. The term "controversial development application" is defined as one for which at least 25 persons have made submissions by way of an objection.

(c) Appointing or renewing the appointment of the General Manager or terminating their employment. (This does not include the appointment of an acting or temporary General Manager)

(d) Decisions relating to the Council entering into a sponsorship arrangement with a total Council contribution value exceeding \$10,000 (excluding GST).

(e) Irrevocable decisions that will have a significant impact on the Shire of Hornsby or the community.

(f) Reports requested or initiated by a Councillor, candidate or member of the public that, in the General Manager's opinion, may be perceived within the general community as an electoral issue that reflects upon

the Council's decision-making process 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 or organisations or the community generally to comment on an issue, proposed action or proposed policy.

1.4 Scheduling Consideration of Major Decisions

So far as is reasonably practicable, the General Manager should avoid scheduling major 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.

Where extraordinary circumstances prevail, the General Manager may submit a major decision to the Council in accordance with Part 3 of this policy.

Routine decisions should proceed as usual. Decisions should be made in the public interest and Council will have regard to all the circumstances including the urgency of the matter and whether there may be financial or legal consequences if a matter is deferred.

1.5 Decisions Made Prior to a Caretaker Period

This Policy only applies to actual 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.

2 - IMPLEMENTATION OF CARETAKER PRACTICES

2.1 Role of the General Manager in Implementing Caretaker Practices

The role of the General Manager in implementing the caretaker practices outlined in this policy is as follows:

- (a) The General Manager will ensure as far as possible, that all Councillors and staff are aware of the Caretaker Policy and practices, at least 30 days prior to the start of the Caretaker Period.
- (b) The General Manager will ensure, as far as possible, that any major policy or significant decisions required by the Council are scheduled for Council resolution prior to the Caretaker Period or deferred where appropriate for determination by the incoming Council.
- (c) The General Manager 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.

3 - EXTRAORDINARY CIRCUMSTANCES REQUIRING EXEMPTION

3.1 Extraordinary Circumstances

Council is entitled to seek the Minister for Local Government's approval if it believes it needs to make a decision covered by points (a), (b) and (c) in the definition of 'Major Decision' during the Caretaker Period. The General Manager may, where extraordinary circumstances prevail, permit a matter covered by points (d), (e) and (f) in the definition of a 'Major Decision' to be submitted to the Council. The General Manager is to have regard to a number of circumstances, including but not limited to:

- (a) whether the decision is 'significant';
- (b) the urgency of the issue;

- (c) the possibility of legal and/or financial repercussions if it is deferred;
- (d) whether the decision is likely to be controversial; and
- (e) the best interests of the Shire of Hornsby.

4 - CARETAKER STATEMENT

To ensure the Council complies with its commitment to appropriate decision making during the Caretaker Period a Caretaker Statement will be included in every report submitted to the Council for a decision. The Caretaker Statement will specify one of the following:

- (a) "The recommended decision is not a 'Major Decision' within the context of Council Policy 'Elections - Caretaker Period'."
- (b) "The recommended decision is a 'Major Decision' within the context of Council Policy 'Elections – Caretaker Period' however; an exemption should be made due to extraordinary circumstances (insert the circumstances for making the exemption)".

5 - COUNCIL PUBLICATIONS

5.1 Prohibition on Publishing Electoral Material

Other than as provided for in 5.5 under, Council shall not print, publish or distribute, or cause, permit or authorise others to print, publish or distribute on behalf of the Council any 'electoral material' that contains 'electoral matter' during the Caretaker Period.

5.2 Electoral Material Relevant to Prohibition

Without limiting the generality of the definition of 'electoral matter', 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.
- (d) the achievements of the current Councillors.

5.3 Candidate and/or Councillor Publications

Candidates and/or Councillors are permitted to publish campaign material on their own behalf but cannot purport that the material originated from or is authorised by the Council. For example, use of the Shire of Hornsby crest or logo is prohibited as is use of any of Council's photographs or images, which convey an endorsement by the Council.

5.4 Election Announcements

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

5.5 Council Publications including Mayoral Columns

Reference to Councillors and or the Mayor in the Council's publications printed, published or distributed during the Caretaker Period is not permitted. Any of the Council's publications that are potentially affected by this policy are to be reviewed by the General Manager to ensure that any circulated, displayed or otherwise publicly available material during the Caretaker Period does not include content that may be construed as 'electoral matter'.

5.6 Council Website

During the Caretaker Period the Council's website will not include content, which is precluded by this policy. Any references to the election will only relate to the election process. Information about Councillors will be restricted to names, contact details, titles, membership of special committees and other bodies to which they have been appointed to by the Council, as would normally appear.

5.7 Councillor Business Cards

Councillors shall ensure that their allocated business cards are used only for purposes associated with the normal role of a Councillor in servicing their electorate. Councillor Business Cards shall not be used in a manner that could be perceived as an electoral purpose.

6 - PUBLIC CONSULTATION DURING THE CARETAKER PERIOD

6.1 Prohibition

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 is contentious, unless the consultation is a mandatory statutory process or prior approval is given by the Council or General Manager.

7 - ATTENDANCE AND PARTICIPATION AT EVENTS/FUNCTIONS

7.1 Public Events Hosted by External Bodies

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

7.2 Councils Organised Civic Events/Functions

Civic events/functions organised by the Council and held during the Caretaker Period will be reduced to only those essential to the operation of the Shire, and should not in any way be associated with any issues considered topical and relevant to the election. Only sitting Councillors will be formally acknowledged at such events/functions.

Councillor participation in Community Festivals and events should promote Council as a whole and not be used or be construed to gain advantage in support of an election campaign.

7.3 Addresses by Councillors

Speech notes provided to the Mayor and Deputy Mayor by Council staff are not to include content which could be construed as "electoral matter".

Councillors, who are also candidates, are not permitted to make speeches or addresses other than short welcome speeches at events and functions organised or sponsored by the Council during the Caretaker Period.

7.4 Delegates to Community and Advisory Groups

Councillors appointed to community groups, advisory groups and other external organisations as representatives of the Council shall not use their attendance at meetings of such groups to either recruit assistance with electoral campaigning or to promote their personal or other candidate's electoral campaigns.

8 - THE USE OF COUNCIL RESOURCES

8.1 Council Resources

Council's Code of Conduct provides that the Council's resources are only to be utilised in the course of official duties and not for private purposes. This includes the use of resources for electoral purposes. Relevant Council resources include:

- Council stationery
- Council office equipment such as photocopiers and fax machines whether located at a Councillor's residence or provided at the Council Chambers
- Council vehicles
- Council communication devices such as fixed and mobile telephones and computers
- Council facilities such as the Mayor's Room, Councillors Room and refreshment facilities
- Human resources such as secretarial or clerical support

It should be noted that the prohibition on the use of the Council's resources for electoral purposes is not restricted to the Caretaker Period.

8.2 Staff Support

The Council's staff must not undertake any tasks connected directly or indirectly with an election campaign and should avoid assisting Councillors in ways that could create a perception that they are being used for electoral purposes.

8.3 Expenses incurred by Councillors

Payment or reimbursement of costs relating to Councillors' out-of-pocket expenses incurred during the election period should only apply to necessary costs that have been incurred in the performance of normal Council duties not campaigning, and not for expenses that could be perceived as supporting or being connected with a candidate's election campaign.

8.4 General

In any circumstances where the use of the Council's resources might be construed as being related to a candidate's election campaign, advice is to be sought from the General Manager.

9 - ACCESS TO COUNCIL INFORMATION AND ASSISTANCE

9.1 Councillor and Candidate Access to Information

During a Caretaker Period, Councillors are able to continue, as normal, to access Council information relevant to the performance of the functions of a Councillor.

However, this access to information 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 so accessed must not be used for election purposes.

All candidates will have equal rights to access, as normal, public information from the Council's administration staff.

9.2 Media Advice

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

9.3 Publicity Campaigns

During the Caretaker Period, publicity campaigns, other than for the purpose of the conduct or promotion of the election will be avoided wherever possible. Where a publicity campaign is deemed necessary for a Council activity, it must be approved by the General Manager. In any event, the Council's publicity during the Caretaker Period will be restricted to communicating normal Council activities and initiatives.

9.4 Media Attention

Councillors will not use their position as an elected representative or their access to Council staff or resources to gain media attention in support of their or any other candidate's election campaign.

9.5 Council Employees

During the Caretaker Period no Council employee may make any public statement that relates to an election issue unless the statement has been approved by the General Manager.

9.6 Election Process Enquiries

All election process enquiries from candidates, whether current Councillors or not, will be directed to the Returning Officer or the State Electoral Commission.