



## **PRE-ELECTION CARETAKER POLICY**

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| <b>Date Resolved By Council:</b> | 22 September 2008      |
| <b>Commencement Date:</b>        | 28 October 2008        |
| <b>Review Date:</b>              | May 2012               |
| <b>Revocation Date:</b>          | September 2012         |
| <b>Responsible Directorate:</b>  | Chief Executive Office |

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# PRE-ELECTION CARETAKER POLICY

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**NOTE:** *This policy replaces the earlier Pre-Election Caretaker Policy adopted by Council on 26 July 2004.*

## 1. INTRODUCTION

In December 2003, significant amendments were made to the *Local Government Act 1989* ("the Act") that formalised the previous caretaker convention by introducing statutory requirements to be applied in the 2004 and subsequent Council elections. These amendments introduce specific provisions to prohibit Council making major policy decisions, or publishing or distributing electoral matter in an election period and are detailed in **Attachment 1**. Council is also required to adopt caretaker procedures as part of a mandatory Code of Conduct for Councillors.

Amendments to the Act in August 2008 have resulted in the caretaker period being reduced to a period of 32 days to bring it into line with State and Federal Government caretaker conventions.

The caretaker provisions apply during the "election period". The Act defines the "election period" as starting on the last day for nominations and ending at 6pm on the election day. The last day for nominations is the day that is 32 days before the election day.

The election period for the 2008 local government elections will therefore commence at midnight on 28 October 2008 and end at 6:00pm on 29 November 2008.

## 2. PURPOSE

The purpose of this Pre-election Caretaker Policy is to ensure that the ordinary business of local government in the City of Boroondara continues throughout the election period in a responsible and transparent manner, and in accordance with statutory requirements and established 'caretaker' conventions. This Policy commits Council during the caretaker period to:

- avoid making significant new policies or decisions that could unreasonably bind a future Council; and
- ensure that public resources, including staff resources, are not used in election campaigning or in a way that may improperly influence the result of an election, or improperly advantage existing Councillors as candidates in the elections.

The Pre-election Caretaker Policy has been developed in order to ensure that the general elections for the Boroondara City Council on Saturday 29 November 2008 and any subsequent elections are conducted in a manner that is ethical, fair and equitable, and is publicly perceived as such.

## 3. DEFINITIONS

It should be noted that where terms used in this Policy are defined in the Act, their use in this Policy is consistent with the definitions in the Act. Definitions used in this Policy are detailed in **Attachment 2**.

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## 4. APPLICATION OF POLICY

During the Election Period Council will function in accordance with this Pre-election Caretaker Policy commencing at the Entitlement Date and continue until 6.00pm on the Election Day.

### 4.1 Role of Chief Executive Officer

The Chief Executive Officer or her delegate will ensure as far as possible, that all Councillors and Officers are informed of the application of this policy 30 days prior to the commencement of the Pre-Election Caretaker Period.

The Chief Executive Officer or her delegate will ensure as far as possible, that matters of Council business requiring major policy or significant decisions are scheduled for Council to enable resolution prior to the commencement of the Pre-election Caretaker Period, or deferred where appropriate for determination by the incoming Council.

The Chief Executive Officer will issue guidelines to staff on the role and responsibilities of staff in the implementation of this policy.

## 5. MAJOR POLICY DECISIONS

### 5.1 Definition

Major Policy Decision is defined in the Act.

### 5.2 Prohibition on Council

During the Election Period, Council will not make major policy decisions.

### 5.3 Extraordinary Circumstances

If Council considers that there are extraordinary circumstances where Boroondara's community would be significantly disadvantaged by the Council not making a particular Major Policy Decision, the Council will, by resolution, request an exemption from the Minister for Local Government in accordance with section 93A(2) of the Act.

## 6. SIGNIFICANT DECISIONS

During the Pre-Election Caretaker Period the Council will not make decisions that significantly affect the municipality and unreasonably bind the incoming Council.

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## 7. PUBLIC CONSULTATION

### 7.1 Definition

Public consultation means a process which involves an invitation or invitations to individuals, groups or organisations or the community generally to comment on an issue or proposed action or proposed policy, and includes discussion of that matter with the public.

### 7.2 Right to Postpone

Public consultation may be undertaken during the Caretaker period to facilitate the day to day business of Council, to ensure matters continue to be proactively managed. Consultations will avoid express or implicit links to the election. In view of the potential for a matter or issue to become contentious or politically sensitive in the course of the Election Period, Council reserves the right to postpone a matter if the issue is likely to affect voting. Council will not continue or commence consultation on any contentious or politically sensitive matter after the date on which nominations close.

### 7.3 Statutory Requirements

The requirements of Clause 7.2 do not apply to public consultation required under the *Planning and Environment Act 1987*, or matters subject to Section 223 of Act.

## 8. COUNCIL PUBLICATIONS

### 8.1 Definition

Publication includes any means of publication including letters and information on the internet.

### 8.2 Prohibition on Publishing Materials during the Election Period

Section 55D of the Act prohibits Council from printing, publishing or distributing publications containing electoral matter during an election period. Electoral matter is any matter which is intended or likely to affect voting in an election, but does not include:

- any electoral material produced by or on behalf of the returning officer for the purposes of conducting an election, or
- an advertisement in a newspaper announcing the holding of a meeting.

### 8.3 Material Relevant to Prohibition

A publication is taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to or comment on:

- the election; or
- a candidate in the election; or
- an issue submitted to, or otherwise before, the voters in connection with the election.

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### **8.4 Council Publications**

Any references to Councillors standing for re-election in Council Publications printed, published or distributed during an election period must not include promotional text.

### **8.5 Website**

During the Election Period Council's website will not contain material which is precluded by this policy or the statutory requirements relating to publications. Any references to the election will only relate to the election process. Any references to Councillors standing for re-election must not include promotional text. Information about Councillors will be restricted to the names of the elected representatives and contact details.

### **8.6 Annual Report**

Council is required by the Act to produce and put on public display a copy of its Annual Report. The 2007/2008 Annual Report will be published during the Election Period. The Annual Report will not contain any material that could be regarded as overt electioneering or that inappropriately promotes individual Councillors.

## **9. COUNCIL RESOURCES**

### **9.1 Officers' Discretion**

The Council will ensure that due propriety is observed in the use of all Council resources, and Council staff are required to exercise appropriate discretion in that regard. Where the use of Council resources appear to relate to the election campaign of a Councillor standing for re-election, the matter must be referred to the Chief Executive Officer or his/her delegate.

### **9.2 Application of Resources**

Council resources, including, offices, staff, hospitality services, equipment and stationery will be used exclusively for normal Council business during the Pre-Election Caretaker Period, and will not be used in connection with any election campaign or issue.

### **9.3 Role of Secretary to Mayor and Councillors**

The Secretary to the Mayor and Councillors and Governance staff will not be asked to undertake any tasks connected directly or indirectly with the election campaign of a Councillor standing for re-election.

### **9.4 Use of Council Equipment by Councillors**

Councillors may continue to use any Council equipment provided to them to facilitate their performance of normal Council duties, subject to existing protocols and terms of use. Councillors standing for re-election must not use Council equipment as a resource to assist with election campaigns.

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### **9.5 Councillors' Entitlement to Reimbursement**

Reimbursements of Councillors' out-of-pocket expenses during the Pre-Election Caretaker Period will only apply to costs that have been incurred in the performance of normal Council duties, and not for expenses that support or are connected with a candidate's election campaign.

### **9.6 Council Branding**

No Council logos, letterheads, or other corporate branding will be used for, or linked in any way to, a candidate's election campaign.

### **9.7 Cessation of Ward Meetings**

Ward meetings and newsletters (e.g. WardTalks) will not be arranged by Council during the Election Period.

## **10. MEDIA SERVICES**

### **10.1 Restriction on Services**

Council's Communications and Community Engagement Department undertake the promotion of Council activities and initiatives. During the Election Period this department must not be used in any way that might promote a Councillor as an election candidate. Council publicity during the Election Period will be restricted to communicating normal Council activities and initiatives.

### **10.2 Media Releases/Spokespersons**

Media releases will minimise references to specific Councillors and will not identify any Councillor in a manner that could promote a Councillor as an election candidate. Where it is necessary to identify a spokesperson, the Chief Executive Officer or his/her delegate will be consulted.

### **10.3 Councillors**

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

### **10.4 Council Employees**

During the Election Period no Council employee may make any public statement that relates to an election issue unless approved by the Chief Executive Officer or her delegate.

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## 11. INFORMATION

### 11.1 Candidates' Access to Information

All election candidates have equal rights to information relevant to their election campaigns from the Council administration. While it is important that sitting Councillors continue to receive information that is necessary to fulfil their existing elected roles, neither Councillors nor candidates will receive information or advice from Council officers that may improperly advantage candidates in the elections. There will be complete transparency in the provision of all information and advice during the Pre-Election Caretaker Period.

### 11.2 Information Request Register

An Information Request Register will be maintained by the Manager Governance during the Pre-Election Caretaker Period. This Register will be a public document that records all requests relating to electoral matters and non-routine requests for information by Councillors and candidates, and the responses given to those requests.

### 11.3 Improper Use of Position

Section 76B of the Act prescribes serious penalties for any Councillor who inappropriately makes use of their position or information obtained in the role of Councillor, to gain an advantage.

## 12. ASSISTANCE TO CANDIDATES

### 12.1 Role of Returning Officer

All election related enquiries from candidates, whether sitting Councillors or not, will be directed to the Returning Officer or, where the matter is outside the responsibilities of the Returning Officer, to the Chief Executive Officer or his/her delegate.

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## Attachment 1

### Relevant Sections from the *Local Government Act, 1989*

#### **Section 55D Prohibition on Council**

A council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process.

#### **Section 3(1) Definitions**

“**election period**”, in relation to an election, means the period that -

- (a) starts on the entitlement date; and
- (b) ends at 6pm on election day;

“**electoral advertisement, handbill, pamphlet or notice**” means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting;

“**publish**” means publish by any means including by publication on the internet;

**Section 3(1A)** ‘In this Act, “**electoral matter**” means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the returning officer for the purposes of conducting an election.

**3(1B)** Without limiting the generality of the definition of “electoral matter”, matter is to be taken 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; or
- (b) a candidate in the election; or
- (c) an issue submitted to, or otherwise before, the voters in connection with the election.’

#### **Section 76B Rules of conduct**

- (1) In performing the role of a Councillor or a member of a special committee, a person -
  - (a) must act honestly;
  - (b) must exercise reasonable care and diligence.
- (2) A person who fails to comply with subsection (1) is guilty of an offence against this Act.
- (3) A person who is, or has been, a Councillor or member of a special committee -
  - (a) must not make improper use of their position -
    - (i) to gain, or attempt to gain, directly or indirectly, an advantage or themselves or for any other person;
    - (ii) to cause, or attempt to cause, detriment to the Council;
  - (b) must not make improper use of information acquired because of their position -
    - (i) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person
    - (ii) to cause, or attempt to cause, detriment to the Council.
- (4) A person who fails to comply with sub-section (3) is guilty of an offence.

Penalty: 100 penalty units.

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### **Section 76C Code of Conduct**

- (1) A Council must develop and approve a Code of Conduct for the Council within the period of 6 months after the commencement of section 57 of the *Local Government (Democratic Reform) Act 2003*.
- (2) A Council must review the Code of Conduct within the period of 6 months after a general election.
- (3) A Code of Conduct-
  - (a) must include the provisions of section 76B;
  - (b) must set out processes for the purpose of resolving an internal dispute between Councillors;
  - (c) must specify procedures applying in relation to disclosure of interests and conflict of interests;
  - (d) must include provisions in respect of any matter prescribed for the purpose of this section;
  - (e) may include any other matters relating to the conduct of Councillors which the Council considers appropriate.
- (4) Without limiting sub-section (3), a Code of Conduct must contain a statement of the caretaker procedures which are to apply during an election period including procedures-
  - (a) consistent with section 93A to ensure that inappropriate decisions are not made during the election period;
  - (b) consistent with section 55D to ensure the Council does not inappropriately publish or distribute electoral matter during an election;
  - (c) to ensure that resources of the Council are not inappropriately applied during an election period.
- (5) A Code of Conduct must not be inconsistent with any Act or regulation.
- (6) A copy of the current Code of Conduct must be-
  - (a) given to each Councillor;
  - (b) available for inspection by the public at the Council office and any district offices.”.

### **Section 93A Conduct of Council during an Election Period**

- (1) Subject to this section, a Council, a special Committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.
- (2) If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.
- (3) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.
- (4) A major policy decision made in contravention of this section is invalid.

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- (5) Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.
- (6) In this section, a “major policy decision” means any decision –
- (a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
  - (b) to terminate the appointment of a Chief Executive Officer under section 94;
  - (c) to enter into a 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) to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100 000 or 1% of Council’s revenue from rates in the preceding financial year\*.’

(\* 1% of Council’s revenue from rates in 2007/2008 is \$852,000)

### **Section 95      Conduct principles**

- (1) Council staff must in the course of their employment-
- (a) act impartially;
  - (b) act with integrity including avoiding real or apparent conflicts of interest;
  - (c) accept accountability for results;
  - (d) provide responsive service.
- (2) Nothing sub-section (1) (c) affects the granting of an indemnity to a member of Council staff in respect of any liability or limits the effect of-
- (a) any such indemnity, whether granted before or after the commencement of section 67 of the Local Government (Democratic Reform) Act 2003; or
  - (b) any immunity conferred on a member of Council staff by or under any Act, whether before or after that commencement.”.

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## Attachment 2

### Definitions

It should be noted that some of the terms used in this Policy are defined in the *Local Government Act 1989* (the Act), and their use in this Policy is consistent with the Act.

Electoral advertisement, handbill, pamphlet or notice has the same meaning as section 3(1) of the Act, and means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting.

Electoral matter has the same meaning as electoral matter in section 3(1A) of the Act and means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the returning officer for the purposes of conducting an election.

Section 3(1B) of the Act further qualifies “electoral matter”.

“3(1B) Without limiting the generality of the definition of “electoral matter” matter is to be taken or 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; or
- (b) a candidate in the election; or
- (c) an issue submitted to, or otherwise before the voters connection with the election.”

Major Policy Decision has the same meaning as section 93A of the Act and means any decision:

- (a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
- (b) to terminate the appointment of a Chief Executive Officer;
- (c) to enter into a Contract the total value of which exceeds whichever is the greater of \$100,000 or 1 per cent of the Council’s revenue from rates in the preceding financial year; and
- (d) to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100,000 or 1 per cent of the Council’s revenue from rates in the preceding financial year

Pre-election Caretaker Period has the same meaning as “election period” in section 3(1) of the Act, and means the period that starts on the entitlement date and ends at 6pm on election day.

Printed electoral material has the same meaning in section 3(1) of the Act and means an advertisement, handbill, pamphlet or notice that contains electoral matter and is intended or calculated to affect the result of an election, and includes a how-to-vote card.

Public consultation is not defined in the Act, but in this context means a process which involves an invitation or invitations to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy.

Publish has the same meaning in section 3(1) of the Act, and means publish by any means including publication on the internet.

Significant Decision is not defined in the Act but in this context means an irrevocable decision that significantly affects the municipality.