

# CM 2 – Electoral Caretaker Period

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## 1 Objectives

This Policy establishes protocols for the purpose of avoiding actual and perceived advantage or disadvantage to a candidate in a Local Government Election, through the use of public resources or decisions made by the Council or administration on behalf of the Shire of Bridgetown-Greenbushes (the Shire) during the period immediately prior to an election.

## 2 Scope

This policy applies to Council Members and Workers during a 'Caretaker Period' relevant to:

- (a) Decisions made by the Council;
- (b) Decisions made under delegated authority;
- (c) Decisions made administratively;
- (d) Promotional materials published by the Shire;
- (e) Discretionary community consultation;
- (f) Events and functions, held by the Shire or other organisations;
- (g) Use of the Shire's resources; and
- (h) Access to information held by the Shire.

## 3 Definitions

### 3.1 Caretaker Period

Means the period of time prior to an Election Day, specifically being the period from the close of nominations (44 days prior to the Election Day in accordance with s.4.49(a) of the *Local Government Act 1995*) until:

- (a) the day after the day on which the returning officer declares the result of the relevant election under section 4.77; or
- (b) if section 4.57(1) applies to the relevant election — the day after the day on which the close of nominations falls; or
- (c) if section 4.58(1) applies to the relevant election — the day after the day on which the candidate dies

### 3.2 CEO

Means the Chief Executive Officer of the Shire.

### 3.3 Election Day

Means the day fixed under the *Local Government Act 1995* for the holding of any poll needed for an election. For the purposes of this Policy, 'Election Day' meaning generally excludes an Extraordinary Election Day unless otherwise specified in this Policy.

### 3.4 Electoral Material

Includes any advertisement, handbill, pamphlet, notice, letter, email, social media post or article that is intended or calculated to affect an Election Day result, but does not include:

- (a) An advertisement in a newspaper announcing the holding of a meeting (s.4.87(3) of the *Local Government Act 1995*); or
- (b) Any materials exempted under Regulation 78 of the *Local Government (Elections) Regulations 1997*; or
- (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.

### 3.5 Events and Functions

Including gatherings for the purpose of discussion, review, acknowledgement, communication, consultation, celebration or promotion, of any matter relevant to the Shire and/or its stakeholders and may take the form of workshops, forums, launches, promotional activities, social occasions such as dinners and receptions, including; gatherings coordinated or facilitated by the Shire or an external entity.

### 3.6 Significant Act

Means any of the following:

- (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 paragraphs (a) to (g);
- (i) an act done under a written law or otherwise that is a prescribed act.

### 3.7 Caretaker Protocol

Means the practices or procedures prescribed in this Policy.

### 3.8 Worker

A part-time or full-time employee, casual employee, contractor, subcontractor, self-employed person, outworker, apprentice or trainee, work experience student, employee of a labour hire company placed with a 'host employer' and volunteers.

## 4 Policy

### 4.1 Caretaker Period Protocols – Decision Making

The CEO will ensure that:

- (a) At least 30-days prior to a Caretaker Period, the CEO will advise Council Members and Workers in writing of the dates that the Caretaker Period commences and concludes.
- (b) Candidates are provided with a copy of this Policy at the time of their nomination for election, to ensure their awareness of the protocols and equitable access requirements.

#### **4.1.1 Scheduling Significant Acts**

1. During a Caretaker Period, unless legislation provides otherwise, the CEO will reasonably ensure that:
  - (a) Council or Committee Agendas, do not include reports and/or recommendations that constitute a Significant Act; and
  - (b) Council Forums, Workshops or Briefings, do not list for discussions matters that relate to a Significant Act.
2. The CEO shall reasonably ensure that, unless legislation provides otherwise, a Significant Act is either:
  - (a) Considered by the Council prior to the Caretaker Period; or
  - (b) Scheduled for determination by the incoming Council.
3. The CEO shall reasonably ensure that, unless legislation provides otherwise, Delegated Authority from the Council to the CEO or a Committee is not exercised where the exercise of that delegated authority relates to a Significant Act or an election campaign issue.

#### **4.1.2 Council Reports Electoral Caretaker Period Policy Statement**

##### **4.1.2.1 Significant Act**

##### **1. Council Reports**

Where, during a Caretaker Period, a Significant Act is permitted, the CEO may submit a report on a Significant Act for Council's consideration, subject to the report including:

- (a) Details, if applicable, of options for what aspects of the decision are necessary to be made within the Caretaker Period and what aspects may be deferred until after the Caretaker Period.
- (b) An Electoral Caretaker Period Policy Statement, which details why the Significant Act is permitted.

##### **2. Council Forums, Workshops or Briefings**

Where, during a Caretaker Period, a Significant Act is permitted, the CEO may include matters relating to a Significant Act for Council Member discussion at Council Forums, Workshops or Briefings.

The CEO is required to provide Council with advice as to why a Significant Act is permitted. Details of this advice is to be retained, with the Forum, Workshop or Briefing notes, as a Local Government record.

#### **4.1.3 Managing CEO Employment**

This Policy prohibits decisions relating to the employment, remuneration or termination of the CEO during a Caretaker Period.

The Council is however required to fulfil its obligations as the CEO's employer regardless of a Caretaker Period. Therefore, during a Caretaker Period:

1. The Council may consider and determine:

- (a) CEO's leave applications;
  - (b) appoint an Acting CEO, where necessary;
  - (c) suspend the current CEO, where appropriate and in accordance with the terms of their contract.
2. The Council may not initiate a new CEO recruitment process or initiate or undertake a CEO performance review process, during a Caretaker Period.

#### **4.1.4 Delegated Authority Decision Making**

During a Caretaker Period, Workers who have Delegated Authority are required to consider if a proposed delegated authority decision may relate, or be subsidiary, to a Significant Act or election campaign issue and if so, refer the matter to the CEO for review and consideration in accordance with clause 4.1.1(3) above.

## **4.2 Caretaker Period Protocols - Candidates**

Candidates, including Council Members who have nominated for re-election, relevant to an Election Day or Extraordinary Election Day, shall be provided with equitable access to the Shire's public information in accordance with s.5.94 of the *Local Government Act 1995*.

The CEO shall ensure that assistance and advice provided to candidates as part of the conduct of the election is provided equally to all candidates.

Council Members nominating for re-election, may access information and assistance regarding the Shire's operations and Council matters during a Caretaker Period, but only to the extent necessary to perform their role as a Councillor and limited to matters currently relevant to the Shire (refer s.5.92 of the *Local Government Act 1995*).

All election process enquiries from Candidates, including Council Members who have nominated for re-election, will be directed to the Returning Officer, or where the matter is outside the responsibility of the Returning Officer, to the CEO.

### **4.2.1 Candidate Requests on Behalf of Electors, Residents or Ratepayers**

Where a Candidate, including Council Members who have nominated for re-election, requires the assistance of the Administration to respond to a request made by an Elector, Resident or Ratepayer, then the Administration will provide the response directly to the requesting Elector, Resident or Ratepayer and will also advise the candidate of the outcome.

### **4.2.2 Candidate Campaign Electoral Materials**

Candidates, including Council Members who have nominated for re-election, should note that the Shire's official crest or logo may not be used in campaign Electoral Materials without the express permission of the Shire.

### **4.2.3 Candidate Attendance at Meetings**

To ensure equitable access to information about Council's decision making during a Caretaker Period, the CEO shall ensure that Candidates, who are not sitting Council Members, are advised of Ordinary and Special Council Meetings (if open to the public) called and convened during a Caretaker Period; providing each Candidate with a copy of the meeting agenda at the time it is distributed to Council Members.

For the purposes of transparency and the benefit of the public gallery, Candidates are requested to identify themselves as an election candidate prior to asking a question or making a statement at a Council or Committee meeting.

### **4.3 Council Member Caretaker Period Protocols**

#### **4.3.1 Access to Information and Advice**

During a Caretaker Period all Council Members will scrupulously avoid using or accessing Shire information, resources or Worker resources and expertise for the purpose of gaining electoral advantage or disadvantage relevant to their own candidacy or any other person's candidacy (refer s.5.93 of the *Local Government Act 1995*).

During a Caretaker Period, all Council Member requests for information and advice from the Shire will be reviewed by the CEO and where the subject of the information or advice is considered as relating to an election campaign issue, the CEO will either make a determination, or refer the request for Council's determination, as to if the information or advice is/is not to be provided, including if information is provided to one candidate, or if that information is also to be provided to all candidates (i.e. including candidates who are not current Council Members).

#### **4.3.2 Media and Publicity**

During a Caretaker Period, all Council Member requests for media advice or assistance, including Council Members who have nominated for re-election, will be referred to the CEO for review.

The CEO will only authorise Council Member access to media advice or assistance where, in the CEO's opinion, the subject matter is relevant to the Shire's objectives or operations and is not related to an election campaign purpose or issue or to the Council Member's candidacy or the candidacy of another person.

#### **4.3.3 Council Member Business Cards, Shire Printed Materials**

Council Members must ensure that Shire business cards and Local Government printed materials are only used for purposes associated with their role as a Councillor, in accordance with section 2.10 of the *Local Government Act 1995*.

Council Members are prohibited from using Shire business cards or printed materials at any time, including times outside a Caretaker Period, for any election campaign purpose, either in support of their own candidacy or the candidacy of another person.

#### **4.3.4 Council Member Participation in Events and Functions**

During a Caretaker Period Council Members may continue to fulfil their role through attendance at events and functions hosted by external bodies.

#### **4.3.5 Council Member Delegates to External Organisations**

At any time, including times outside of a Caretaker Period, Council Members who are the Council's appointed delegate to an external organisation, must not use their attendance at an external organisation's meeting, event or function for any purpose associated with an election campaign purpose, including; recruiting campaign assistance or to promote their own candidacy or the candidacy of another person.

#### **4.3.6 Council Member Addresses/Speeches**

Excluding the Shire President and Deputy Shire President, when fulfilling their functions prescribed in sections 2.8 and 2.9 of the *Local Government Act 1995*, Council Members who have nominated for

re-election, shall not be permitted to make speeches or addresses during a Caretaker Period at events or functions organised or sponsored by the Shire, unless expressly authorised by the CEO.

In any case, the Shire President, Deputy Shire President and Council Members are prohibited from using an official speech or address during a Caretaker Period to promote an election campaign purpose.

#### **4.3.7 Council Member Misuse of Local Government Resources**

A Council Member who uses Shire resources for the purpose of persuading electors to vote in a particular way is in breach of regulation 17, Schedule 1 of the *Local Government (Model Code of Conduct) Regulations 2021*, adopted as the Shire Code of Conduct for Council Members, Committee Members and Candidates.

This prohibition on misuse of Local Government Resources for electoral purposes applies at all times and is not only applicable to a Caretaker Period.

For clarity, Local Government resources includes, but is not limited to: Worker time or expertise, Shire provided equipment, information and communication technologies, stationery, hospitality, images, communications, services, reimbursements and allowances provided by the Shire.

#### **4.4 Shire Publicity, Promotional and Civic Activities**

Publicity campaigns and promotional activities during a Caretaker Period may be undertaken only for the purposes of:

- (a) Promoting Shire services and activities, where such promotion does not relate to an electoral campaign issue and would otherwise be undertaken as part of normal operations; and
- (b) Conducting the Election and promoting Elector participation in the Election.

All other publicity and promotional activities of Shire initiatives will be, where reasonably practicable, avoided during the Caretaker Period, including the announcement of decisions relating to Significant Acts, made prior to the commencement of a Caretaker Period or proposed to be made after a Caretaker Period.

The CEO may determine if Significant Acts are permitted by legislation and if a Significant Act announcement is necessary during a Caretaker Period.

##### **4.4.1 Civic Events and Functions**

The Shire will avoid the scheduling of Civic Events and Functions during a Caretaker Period, which may give rise to any actual or perceived electoral advantage to Council Members who have nominated for re-election.

Where the Shire is required to schedule a Civic Event or Function during a Caretaker Period at which Council Members would usually be invited, then all Candidates will also be invited to attend and will be acknowledged as candidates immediately following any acknowledgement provided to Council Members. For example, Candidates will be introduced at the function immediately following the introduction of Council Members.

##### **4.4.2 Shire Publications and Communications**

All Shire publications and communications distributed during a Caretaker Period must not include content that:

- (a) May actually, or be perceived to, persuade voting in an election; or

- (b) Is specific to a candidate or candidates, to the exclusion of other candidates;
- (c) Draws focus to or promotes a matter which is a Significant Act, or which is an electoral campaign issue.

All Shire publications and communications proposed to occur immediately prior to, throughout or during, a Caretaker Period must be reviewed and approved by the CEO prior to publication or distribution.

#### 4.4.3 Shire Website and Social Media Content

1. During the Caretaker Period, this Policy applies to content proposed for publication on the Shire’s website and social media channels.

Website and social media content regarding Council Members will be limited to: Council Member names, contact details, membership of committees and Council appointments as Shire Delegates on external committees and organisations however, all other biographical information related to a sitting Council Member who is also a candidate will be removed from public access for the duration of the Caretaker Period.

The Candidate Election Profiles prescribed in s.4.49(b) of the *Local Government Act 1995*, may also be published on the Shire’s website and social media.

2. Website and social media content, published prior to a Caretaker Period, will not be subject to this Policy.
3. New website or social media content which relates to a Significant Act or election campaign issues will not be published during a Caretaker Period, unless legislation provides otherwise.
4. Content posted by the public, candidates or Council Members on the Shire’s social media channels, which is perceived as candidate election campaign material or promotes a candidate or candidates will be removed.

#### 4.4.4 Community Consultation

The Shire will undertake planned community consultation (discretionary and legislative) during a Caretaker Period unless the consultation relates to a Significant Act or potentially contentious election campaign issue.

## 5 Applicable Legislation and Documents

<b>Statutory Power</b> <i>(Acts, Regulations, Local Laws, TPS)</i>	<i>Local Government Act 1995</i> s.1.4A – Caretaker period s.2.7(2)(b) – The council is to determine the local government’s policies s.4.87 - Printing and publication of electoral material s.5.93 - Improper use of information s.5.103 - Model code of conduct for council members, committee members and candidates  <i>Local Government (Model Code of Conduct) Regulations 2021</i> r.17 - Misuse of local government resources
<b>Shire Policies</b>	N/A
<b>Related Documents</b>	N/A

Related Procedure	N/A
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## 6 Administration

Original Adoption Date	30 August 2018
Last Variation Date	29 February 2024
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