

2.9 ELECTION CARETAKER

Responsible Directorate	Corporate Services	
Responsible Service Area	Governance	
Adopted	June 2021	C14.06.21 (OR-22)
Reviewed	July 2023	C13.07.23
Procedure Ref	N/A	

1. PURPOSE

This purpose of this policy is to:

- prevent the Council of Shire of Mundaring (the Shire) making major decisions or undertaking significant acts prior to an ordinary election, that would bind an incoming Council;
- prevent council members from using public resources in ways that are seen as advantageous or disadvantageous to, or promoting sitting council members who are seeking re-election or new candidates; and
- recognise that there is a requirement for Shire employees to act impartially in relation to all candidates.

2. SCOPE

This policy applies to council members and Shire employees during a caretaker period (see below for definition) relevant to:

- a. decisions 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 candidates who are not sitting council members cannot be compelled to comply with a Council policy, such candidates will be made aware of this policy and encouraged to cooperate with its implementation. In addition, candidates will be informed of the "Code of Conduct for Council Members, Committee Members and Candidates" (Code of Conduct) and that a breach of the requirements of the Code of Conduct could result in a complaint being brought against the candidate should they be elected to Council (section 5.104(6) of the Act and clause 11 of the Code of Conduct).

3. DEFINITIONS

Act	the <i>Local Government Act 1995</i> .
caretaker period	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 which is determined in accordance with section 4.49(a) of the <i>Local Government Act 1995</i> until 6.00 pm on Election Day.
CEO	the Chief Executive Officer, who is the most senior employee in the organisation. The CEO is appointed by and directly accountable to the Council.
council member	a person elected under the Act as a member of Council. The Shire's council members includes the Shire President, Deputy Shire President and Councillors (as defined by the Act).
election day	the day fixed under the <i>Local Government Act 1995</i> for the holding of any poll needed for an election. For the purposes of this policy, 'Election Day' generally excludes an Extraordinary Election Day unless otherwise specified in this policy.
electoral material	any advertisement, handbill, pamphlet, notice, letter or article that is intended or calculated to affect the result in an election, but does not include: <ol style="list-style-type: none">an advertisement in a newspaper announcing the holding of a meeting (section 4.87(3) of the Act;any materials exempted under regulation 78 of the <i>Local Government (Elections) Regulations 1997</i>;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.

events and functions

including but not limited to 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 conferences, workshops, forums, launches, promotional activities, social occasions such as dinners and receptions, including; gatherings coordinated or facilitated by the Shire or an external entity.

extraordinary circumstances

a situation that requires a significant act be considered by Council because of the possibility of legal and/or financial repercussions if a decision is deferred or because of statutory timeframe requirements.

significant act

the following acts which are restricted during a caretaker period include:

- a. making or amending of a local law (including making a local law to amend or repeal a local law)
- b. a decision relating to the employment, termination or remuneration of the CEO other than a decision to appoint an Acting CEO or, where extraordinary circumstances exist, suspend the current CEO (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.
- c. entering into a major land transaction or land transaction as defined by section 3.59 of the Act that is preparatory to enter into a major land transaction.
- d. commencing a major trading undertaking as defined by section 3.59 of the Act.
- e. entering into a contract, or other agreement or arrangement with an expected value which would result in substantial expenditure.
- f. entering into a sponsorship arrangement with a total Shire contribution value exceeding \$10,000 (excluding GST) and not provided for in the adopted budget.
- g. committing the Shire to substantial expenditure or actions that, in the CEO's opinion, are significant, such as that which might be brought about through a Notice of Motion by a council member.

- h. considering a decision that, in the CEO's opinion, will have a significant impact on the Shire or the community.
- i. considering a report requested or initiated by a council member, candidate or member of the public that, in the CEO'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 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 expenditure that exceeds 0.1% of the Shire's annual budgeted revenue (excluding GST) in the relevant financial year.

4. POLICY

4.1. Scheduling Consideration of significant Acts

So far as is reasonably practicable, the CEO should avoid scheduling significant acts 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 exist the CEO may submit a report to Council.

It should be noted that this policy does not apply to items referred to the Joint Development Assessment Panel and Council's role in considering planning matters as a responsible authority under the *Planning and Development Act 2005*.

4.2. 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.

4.3. Implementation of Caretaker Practices

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

- a. The CEO will ensure, as far as possible, that all council members and employees are aware of this policy and practices at least 30 days prior to the start of the caretaker period.
- b. The CEO will ensure that all candidates in an election are aware of the Code of Conduct upon acceptance of their nomination.
- c. The CEO will ensure, as far as possible, that any significant acts required to be made by Council are scheduled for Council resolution prior to the caretaker period or deferred for determination by the incoming Council.
- d. The CEO will endeavour to make sure all announcements regarding decisions made by Council prior to the caretaker period are publicised prior to the caretaker period.

4.4. 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 significant act:

“The recommended decision is a significant act within the context of the “Election 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”.

4.5. Shire Publications

During the caretaker period, the Shire's official website, digital media and any other publications will not contain any material which is precluded by this policy. Any references to the election will only relate to the election process.

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.

4.6. Candidate and/or Council Member Publications

Council members and/or candidates are permitted to publish campaign material on their own behalf, but cannot claim that material originated from or was authorised by the Shire.

4.7. Public Consultation During the Caretaker Period

Public consultation can occur during an election period to ensure the normal business of local government continues and ordinary matters of administration are addressed.

During the caretaker period it is prohibited under this policy for public consultation to be undertaken on an issue which, in the CEO'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 Act or any other legislation, to be undertaken to enable the Shire to fulfil its functions.

4.8. Attendance and Participation at Events or Functions

4.8.1. Public Events and Functions Hosted by External Bodies

Council members may continue to attend events and functions hosted by external bodies during the caretaker period.

4.8.2. Shire Organised Civic Events or Functions

Events and/or functions organised 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 CEO's opinion, are considered relevant to or likely to influence the outcome of an election unless extraordinary circumstances apply.

All known candidates are to be invited to civic events or functions organised by the Shire during the caretaker period.

4.8.3. Addresses by Council Members

Excluding the Shire President and Deputy Shire President fulfilling their functions as prescribed by sections 2.8 and 2.9 of the Act, respectively, council members that are also candidates should not, without the prior approval of the CEO, be permitted to make speeches or addresses at events/functions organised or sponsored by the Shire during the caretaker period. Such speeches or addresses should adhere to the intent of 4.8.2.

The Shire President or Deputy Shire President may request the CEO or their delegate to be the host, chair, master of ceremonies etc. as the occasion may require.

4.8.4. Delegates to Community and External Organisations

Council 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.

4.9. Use of Shire Resources

The 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.

Shire employees must not be asked to undertake any tasks connected directly or indirectly with an election campaign and should avoid assisting council 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 CEO.

4.10. Access to Information

During the caretaker period council members are able to request access to Council information relevant to the performance of their functions as council member. However any request for access to information should be exercised with caution and be limited to current Council matters. Any Council information so accessed must not be used for election purposes.

Public information is readily available on the Shire's official website by council members and candidates.

4.10.1. Electoral Information and Assistance

All candidates will have equal rights to access public electoral information, such as the electoral rolls and information relevant to their election campaign, from the Returning Officer or CEO.

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

4.10.2. Media Advice

The role of the Shire President under section 2.8 of the Act in relation to speaking on behalf of the Shire continues during the caretaker period.

Any requests for media advice or assistance from council members during the caretaker 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 any individual council member(s).

4.10.3. 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 CEO.

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

4.10.4. Media Attention

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

4.10.5. Election Process Enquiries

All election process enquiries from candidates, whether current council 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 CEO.

5. RELATED LEGISLATION

Local Government Act 1995 Part 4

Local Government (Elections) Regulations 1996

Local Government (Model Code of Conduct) Regulations 2021

6. RELATED DOCUMENTS

Code of Conduct for Council Members, Committee Members and Candidates
(1.1)