

Policy P702 Council Caretaker

Strategic Direction	Leadership
Responsible Business Unit/s	Governance
Responsible Officer	Manager Governance
Affected Business Unit/s	All Business Units

Policy 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 City of South Perth during the period immediately prior to an election.

Definitions

‘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*) and ends -

- i) the day after the day on which the returning officer declares the result of the election (4.77); or
- ii) if there are no candidates for the offices — on the day after the day on which the close of nominations falls (4.57); or
- iii) if section 4.58(1) applies to the relevant election — on the day after the day on which the candidate dies (4.58).

‘CEO’ means the Chief Executive Officer of the City of South Perth.

‘Election Day’ means the day fixed under the *Local Government Act 1995* for the holding of any poll needed for an election, including an extraordinary election to elect a new Mayor. For the purposes of this Policy, ‘Election Day’ meaning generally excludes an Extraordinary Election Day unless otherwise specified in this Policy.

‘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 City of South Perth 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.

‘Emergency’ means

- 1. The occurrence or imminent occurrence, of an event, situation or condition that is a hazard which is of such a nature or magnitude that it requires a significant and coordinated response such as;
 - a. a cyclone, earthquake, flood, storm, tsunami or other natural event;
 - b. a fire;
 - c. a road, rail or air crash;
 - d. a plague or an epidemic;
 - e. a terrorist act as defined in The Criminal Code section 100.1 set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth;
 - f. any other event, situation or condition that is capable of causing or resulting in—
 - i. loss of life, prejudice to the safety, or harm to the health, of persons or animals; or
 - ii. destruction of, or damage to, property or any part of the environment, and is prescribed by the regulations; or
- 2. A public health emergency which is an event or circumstance, or a series of events or circumstances, that is causing or contributing to, has caused or contributed to or may cause or contribute to serious adverse effects on public health. (*Public Health Act 2016* 4 (1))

‘Civic Events and Functions’ includes public gatherings for the purpose of discussion, review, acknowledgement, communication, consultation, celebration or promotion, of any matter relevant to the City of South Perth 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 City of South Perth or an external entity. It does not include workshops, forums or briefings or

post Council Meeting dinners held in the ordinary course of business and usually attended by elected members and employees.

‘Department CEO’ refers to the chief executive officer of the Public Service Department assisting the Minister to administer the *Local Government Act 1995*.

‘Exclusions’ refers to the significant acts that may be undertaken during the caretaker period if it is necessary for the local government to do the significant act during the caretaker period in order to comply with any of the following:

- a) a written law;
- b) an order of a court or tribunal;
- c) a contractual obligation of the local government under a contract entered into by the local government before the caretaker period. (Local Public Notice required in accordance with r3B of the Local Government Functions and General Regulations 1996.)

‘Extraordinary Circumstances’ including a circumstance that requires the local government to do a significant act during the Caretaker Period following the approval from the Department CEO because of an emergency or to ensure the proper operation of the local government.

‘Extraordinary Election’ has the meaning given by section 4.8 of the *Local Government Act 1995*.

Land Transaction means an agreement, or several agreements for a common purpose, under which a local government is to —

- a. acquire or dispose of an interest in land; or
- b. develop land.

Major Land Transaction means a land transaction other than an exempt land transaction if the total value of —

- a. the consideration under the transaction; and
- b. anything done by the local government for achieving the purpose of the transaction, is more, or is worth more, than the amount prescribed for the purposes of this definition being;
 - i. \$10 000 000; or
 - ii. 10% of the operating expenditure incurred by the local government from its municipal fund in the last completed financial year; (r8A Local Government (Functions and General) Regulations 1996).

Major Trading Undertaking means a trading undertaking that —

- a. in the last completed financial year, involved; or
- b. in the current financial year or the financial year after the current financial year, is likely to involve, expenditure by the local government of more than the amount prescribed for the purposes of this definition, except an exempt trading undertaking; being;
 - i. \$5, 000 000; or
 - ii. 10% of the lowest operating expenditure in the past, current, or next financial year's operating expenditure estimates. (r9 Local Government (Functions and General) Regulations 1996).

‘Public Consultation’ includes a process which involves an invitation to individuals, groups, organisations or the wider community to provide comment on a matter, proposed action or proposed policy which may be perceived as or is actually an electoral / campaign issue, but does not include statutory consultation / submission periods prescribed in a written law.

‘Publicly Available Information’ means information which is available in the public domain.

‘Significant Act ’ includes any decision:

- 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, other than a decision to appoint an Acting CEO, or suspend the current CEO (in accordance with the terms of their Contract of Employment), pending the Election Day result;
- 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;

For the purposes of paragraph (f):

Entering into a contract is a significant act if either or both of the following apply —

- a. under the contract, the local government is to, or is expected to, provide or receive consideration that is, or is expected to be —
 - i. more than \$250 000 (in total); or
 - ii. worth more than \$250 000 (in total).

- b) under the contract, the local government is to, or is expected to, acquire or dispose of property the market value of which is, or is expected to be, more than \$250 000 (in total).

If a local government intends to enter into two (2) or more contracts in circumstances such that the desire to avoid the requirements of (a) and (b), is a significant reason for not dealing with the matter in a single contract, for the purposes of paragraph (f), entering into any of these contracts is a significant act:

- Acquire includes lease or license from another person;
- Contract means a contract or other agreement or arrangement;
- Dispose includes lease or license to another person;
- Property includes any interest, or any share of an interest, in any property.

- 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;

For the purposes of paragraph (i):

Each of the following is a significant act —

- i. establishing a regional local government;
- ii. amending the establishment agreement for a regional local government;
- iii. winding up a regional local government, otherwise than at the direction of the Minister;
- iv. withdrawing from a regional local government;
- v. forming a regional subsidiary;
- vi. amending the charter for a regional subsidiary; and
- vii. winding up, or withdrawing from, a regional subsidiary.

Commencing the preparation of any of the following under the Planning and Development (Local Planning Schemes) Regulations 2015 Part 3 is a significant act—

- i. a local planning strategy;
- ii. an amendment to a local planning strategy;
- iii. a notice of revocation in respect of a local planning strategy;
- iv. passing a resolution of the kind referred to in the Planning and Development (Local Planning Schemes) Regulations 2015 regulation 19(1);

- v. passing a resolution of the kind referred to in the Planning and Development (Local Planning Schemes) Regulations 2015 regulation 35(1) in relation to a complex amendment (as defined in regulation 34 of those regulations);
- vi. commencing a review of a local planning scheme under the Planning and Development (Local Planning Schemes) Regulations 2015 regulation 65;
- vii. commencing the preparation of an instrument of repeal in respect of a local planning scheme under the Planning and Development Act 2005 section 74(b);
- viii. doing either of the following under the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2 Part 2 Division 2 as that Division has effect as part of a local planning scheme of the local government;
 - resolving to prepare or amend a local planning policy;
 - commencing the preparation of a notice of revocation in respect of a local planning policy;
- ix. publicly inviting persons to apply to join a panel of pre-qualified suppliers under Part 4 Division 3; and
- x. deciding to do anything referred to in paragraphs (i) to (x) of this sub regulation. (7).

The above references do not apply to anything done or a decision to do anything for the purpose of complying with an order or notice given under the *Planning and Development Act 2005* section 76, 77A, 211 or 212.

- j) Relating to the City of South Perth entering into a sponsorship arrangement with a total City of South Perth contribution that would constitute Significant Expenditure, unless the Council resolved “in principle” support for the sponsorship prior to the Caretaker Period taking effect and sufficient funds are allocated in the Annual Budget;
- k) That would commit the City of South Perth to Significant Expenditure or actions that, in the CEO’s opinion, are significant to the Local Government operations, strategic objectives and / or will have significant impact on the community;
- l) To prepare a report, initiated by the Administration, a Council Member, candidate or member of the public that, in the CEO’s opinion, may be perceived as or is actually an election campaign issue;
- m) Initiated through a Notice of Motion by a Council Member, where the effect of that motion will change the status quo or, in the CEO’s opinion, may be relevant to the circumstances described above; and
- n) That adopts a new, or significantly changes an existing, policy, service or service level that incurs Significant Expenditure, unless the decision is necessary to comply with legislation.

Significant Expenditure’ means expenditure that exceeds \$250,000.

Policy Scope

This policy applies to Council Members and Employees 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 City of South Perth;
- (e) Discretionary community consultation;
- (f) Events and functions, held by the City of South Perth or other organisations;
- (g) Use of the City of South Perth’s resources;
- (h) Access to information held by the City of South Perth.

Policy Statement

1. CARETAKER PERIOD PROTOCOLS - DECISION MAKING

During a caretaker period, a local government must not do a significant act.

The CEO will ensure that:

- (a) At least 30 days prior to a Caretaker Period, the CEO will advise Council Members and employees 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.

1.1 SCHEDULING SIGNIFICANT LOCAL GOVERNMENT DECISIONS

- 1. During a Caretaker Period, unless Extraordinary Circumstances or Exclusions apply, the CEO will reasonably ensure that Council or Committee Agendas do not include reports and / or recommendations that constitute significant acts.
- 2. The CEO shall reasonably ensure that, unless Extraordinary Circumstances or Exclusions apply, Significant acts are 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 Extraordinary Circumstances or Exclusions apply, 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.

1.2 COUNCIL REPORTS ELECTORAL CARETAKER PERIOD POLICY STATEMENT

1.2.1 EXTRAORDINARY CIRCUMSTANCES

1. Council Reports

Where, during a Caretaker Period, the Departmental CEO approves that Extraordinary Circumstances apply, 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 Extraordinary Circumstances apply.

2. Council Forums, Workshops or Briefings

Where, during a Caretaker Period, the Departmental CEO determines that Extraordinary Circumstances apply, 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 Exceptional Circumstance apply. Details of this advice is to be retained, with the Forum, Workshop or Briefing notes, as a Local Government record.

1.3 MANAGING CEO EMPLOYMENT

This Policy prohibits significant acts 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) appointing an Acting CEO, where necessary;

- (b) suspending 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.

1.4 DELEGATED AUTHORITY DECISION MAKING IN EXTRAORDINARY CIRCUMSTANCES

During a Caretaker Period, Employees 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 1.1(3) above.

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 City'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 City'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 City.

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.

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.

2.2 CANDIDATE CAMPAIGN ELECTORAL MATERIALS

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

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 link via email 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.

3. COUNCIL MEMBER CARETAKER PERIOD PROTOCOLS

3.1 ACCESS TO INFORMATION AND ADVICE

During a Caretaker Period all Council Members will scrupulously avoid using or accessing City information that is not already publicly available, resources or employee resources and expertise (not readily available to the public), 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 City 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).

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 City'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.

3.3 COUNCIL MEMBER BUSINESS CARDS, CITY PRINTED MATERIALS

Council Members must ensure that City 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 City 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.

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.

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.

3.6 COUNCIL MEMBER ADDRESSES / SPEECHES

Excluding the Mayor and Deputy Mayor, 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 City, unless expressly authorised by the CEO.

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

3.7 COUNCIL MEMBER MISUSE OF LOCAL GOVERNMENT RESOURCES

A Council Member who uses City resources for the purpose of persuading electors to vote in a particular way is in breach of clause 17 of the *Local Government (Model Code of Conduct) Regulations 2021*, adopted as the City of South Perth 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 local government property as defined in the Act, employee time or expertise, City provided equipment, information and communication technologies (e.g. mobile phone, laptop, BigtinCan HUB), stationery, hospitality, images, communications, services, reimbursements and allowances provided by the City.

4. CITY PUBLICITY, PROMOTIONAL AND CIVIC ACTIVITIES

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

- (a) Promoting City services and activities, where such promotion do 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 City initiatives will be, where reasonably practicable, avoided during the Caretaker Period, including the announcement of 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 Exceptional Circumstances apply and if a significant act announcement is necessary during a Caretaker Period.

4.1 CIVIC EVENTS AND FUNCTIONS

The City will generally 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 City 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.

4.2 CITY PUBLICATIONS AND COMMUNICATIONS

All City 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 City 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.

4.3 CITY WEBSITE AND SOCIAL MEDIA CONTENT

- 1. During the Caretaker Period, this Policy applies to content proposed for publication on the City’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 City 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 City’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 significant act or election campaign issues will not be published during a Caretaker Period unless Exceptional Circumstances apply.
- 4. Content posted by the public, candidates or Council Members on the City’s social media channels, which is perceived as candidate election

campaign material or promotes a candidate or candidates will be removed.

4.4 PUBLIC CONSULTATION

The City will undertake planned Public Consultation (discretionary and legislative) during a Caretaker Period unless the consultation relates to a significant act or potentially contentious election campaign issue.

Legislation / Local Law Requirements

Emergency Management Act 2005

Local Government Act 1995

Local Government (Functions and General) Regulations 1996

Local Government (Elections) Regulations 1997

Local Government (Model Code of Conduct) Regulations 2021

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

Public Health Act 2016

Other Relevant Policies / Key Documents

Councillor Code of Conduct