Council Policy P702

Caretaker Period

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 to guide the conduct of Elected Members, Candidates and City employees during the Caretaker Period in the lead up to Election Day.

This Policy outlines the caretaker provision that are required by the *Local Government Act 1995* (the Act) and gives additional guidance to Council Members and employees when making decisions or undertaking official duties within the Caretaker Period.

Policy Scope

This Policy applies to all Council Members, Candidates and employees during a Caretaker Period with respect to:

a. Decisions that are made by the Council or by a City officer under a delegated authority that are defined as a Significant Act under s3.73 of the Act.

b. Media and promotional materials.

c. Use of the City's resources, access to the City's information and support.

d. Attendance and participation at events and functions. e. Employee engagement with Candidates.

Policy Provisions

1. Decision Making by Council and Employees

1.1 Significant Acts - Restrictions on What Local Government May Do During The Caretaker Period

Under section 3.73 of the Act and regulation 3A of the Local Government (Functions and General) Regulations 1996 (the Functions and General Regulations), a local government is prohibited from doing, or deciding to do, any Significant Acts during the Caretaker Period unless otherwise allowed under section 3.73(4) to (6). This prohibition applies whether the decision is to be made by Council or by an officer under a delegated authority.

1.2 Provisions That Allow for a Significant Act to Be Done During the Caretaker Period

In the following certain circumstances, a local government may be able to do the Significant Act:

(a) if the decision to do so was made before the Caretaker Period; or

(b) where the local government is required to do so by law, judicial order or contract.

The Director General of the Department of Local Government may also authorise a local government to do a Significant Act if they are satisfied it is necessary because of an emergency or to otherwise ensure the proper operation of a local government.

2. Caretaker Period Protocols - Candidates

2.1 Candidates Requests for Information

All Candidates shall be provided with equitable access to the City's public information in accordance with s.5.94 of the Act.
During the Caretaker Period any requests for information, with the exception of publicly available information will be recorded, along with the response given to those requests. Requests for information will be reviewed by the CEO or delegate and where the subject of the information is considered as relevant to a campaign issue, the CEO or delegate will have discretion to determine if the information or advice is/is not provided.
All election process enquiries from Candidates, will be directed to the Returning Officer, or where the matter is outside the responsibility of the Returning Officer, to the CEO.

2.2 Candidate Requests on Behalf of Electors, Residents or Ratepayers

Where a Candidate requires the assistance of the City to respond to a request made by an Elector, Resident or Ratepayer, then the City will provide the response directly to the requesting Elector, Resident or Ratepayer, a copy to the candidate will be sent, if requested.

2.3 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.

2.4 Candidate Participation at Meetings

For the purposes of transparency and the benefit of the public gallery, Candidates who are not sitting Council Members, are requested to identify themselves as a Candidate prior to asking public question, public statement or deputation at a Council or Committee meeting.

All Candidates must comply with the Code of Conduct when attending Council or Committee Meetings.

2.5 Candidate Use of Social Media

Candidates must not provide any responses to posts, statements or questions on the City's social media pages, in relation to their own candidacy or the candidacy of another person.

In accordance with the Code of Conduct, Candidates must ensure that their use of social media and other forms of communication complies and must only publish material that is factually correct.

3. Caretaker Period Protocols – Council Members

3.1 Ceo Employment

During a Caretaker Period 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.

3.2 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 17of 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.

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.

3.3 Access to Information and Advice

Council Members must not use or access City information for the purpose of gaining electoral advantage or disadvantage relevant to their candidacy or any other person's candidacy.
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 Council Member and limited to matters currently relevant to the City in accordance with s.5.92 of the Act.

3.4 Council Member - Media and Publicity

Council Members should avoid using their position as an elected representative to gain media attention in support of their or any candidate's election campaign. All Council Members requests for media advice or assistance, will be referred to the CEO or delegate for review.

3.5 Council Member Use of Social Media

Council Members must not provide any responses to posts, statements or questions on the City's social media pages, in relation to their own candidacy or the candidacy of another person.

In accordance with the Code of Conduct, Council Members and Candidates must ensure that their use of social media and other forms of communication complies and must only publish material that is factually correct.

3.6 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 Council Member, 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.

3.7 Council Member Participation in Events and Functions

During the Caretaker Period, Council Members may continue to fulfil their role through attendance at events and functions.
Where a Council Member has been invited to attend in their official capacity as a Council Member, they are prohibited from using an event or function held during a Caretaker Period to promote an election campaign purpose or distribute any Election Material.

3.8 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.

3.9 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.

If the Mayor and Deputy Mayor are unavailable, the CEO will determine the Council Member to perform these duties, which will be on a rotational basis.

3.10 Council Member Campaigning at Council or Committee Meetings

Any attempt to promote any electoral campaign during a Council or Committee meeting is prohibited and must restrict remarks to the motion or amendment under discussion.

4. Caretaker Period Protocols – Administration

4.1 Role of the Ceo in Implementing Caretaker Period Practices

The role of the Chief Executive Officer (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 City employees are aware of this Policy and the Caretaker Period requirements under the Act and the Local Government (Functions and General) Regulations 1996 (the Regulations) at least 30 days prior to the start of the Caretaker Period.

b. To communicate awareness and the equitable access requirements that apply during a Caretaker Period, the CEO will ensure as far as possible, Candidates are provided with a copy of this Policy and the Caretaker Period requirements under the Act and the Regulations following their accepted nomination for a local government election.

4.2 Scheduling Significant Local Government Decisions

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.

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.

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.

4.3 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.

4.4 Scheduling 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.

4.5 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.

4.6 City Website and Social Media Content

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.

Website and social media content, published prior to a Caretaker Period, will not be subject to this Policy.

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.

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.

4.7 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.

5. Complaints

Failure to comply with the Code of Conduct may give rise to a complaint regarding the conduct of Council Members or a Candidate, which may lead to the Council making a formal finding of a breach and requiring remedial action by the individual. Complaints about a candidate cannot be dealt with unless the candidate is elected.

Policy 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 Council 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.;*

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 —

(i) under the contract, the local government is to, or is expected to, provide or receive consideration that is, or is expected to be —

(a) more than $250 000 (in total); or

(b) worth more than $250 000 (in total).

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.

j) making prescribed decisions under the Planning and Development Act 2005 and Planning and Development (Local Planning Scheme) Regulations 2015.

For the purpose of paragraph (j), each of the following is a significant act:

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

(a) a local planning strategy;

(b) an amendment to a local planning strategy;

(c) a notice of revocation in respect of a local planning strategy;

(ii) passing a resolution of the kind referred to in the Planning and Development (Local Planning Schemes) Regulations 2015 regulation 19(1);

(iii) 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);

(iv) commencing a review of a local planning scheme under the Planning and Development (Local Planning Schemes) Regulations 2015 regulation 65;

(v) 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);

(vi) 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;

(a) resolving to prepare or amend a local planning Policy;

(b) commencing the preparation of a notice of revocation in respect of a local planning Policy.

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.

k) *publicly inviting persons to apply to join a panel of pre-qualified suppliers under Part 4 Division 3; and*

l) *deciding to do anything referred to in paragraphs (i) to (k) of this sub regulation.*

Significant Expenditure' *means expenditure that exceeds $250,000.*

Document Control Box			
Legislation	*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*		
Organisational:	Councillor Code of Conduct		
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1	Initial Adoption	28 February 2023	0223/003
2	Adopted	22 August 2023	
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