

# Council Policy

## Electoral Caretaker Period



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Legislation/local law requirements	<i>Local Government Act 1995</i> <i>Local Government (Elections) Regulations 1997</i> <i>Local Government (Model Code of Conduct) Regulations 2021</i> <i>Local Government (Elections) Regulations 1996</i>
Related policy procedures and documents	Code of Conduct for Elected Members, Committee Members and candidates Employee Code of Conduct Elected Members Training and Development Policy Elected Members Allowances, Expenses and Gifts Policy

## 1. Introduction

This policy applies to Elected Members, local government election candidates and employees and specifically applies during a Caretaker Period.

## 2. Purpose

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 the City during the period immediately prior to an election.

This policy extends to Elected Member candidacy for State and/or Federal elections in addition to Local Government Elections.

## 3. Objective

To provide guidance in the lead up to Election Day, ensuring that major decisions which would bind an incoming Council are avoided where possible, preventing the use of public resources in ways that can be seen to be advantageous to, or promoting candidates, and also ensuring staff act impartially in relation to candidates.

## 4. Scope

This policy applies to Elected Members and employees during a 'Caretaker Period' relevant to:

- a) Decisions made by the Council.
- b) Materials published by the City.
- c) Discretionary community consultation.
- d) Attendance and participation at events and functions in an official capacity.
- e) Use of City resources; and
- f) Access to information held by the City.

## Policy Provisions

### 5. Definitions

**Act** means the *Local Government Act 1995*.

**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 section 4.49(a) of the Act) until 6.00pm on Election Day.

**CEO** means the Chief Executive Officer of the City of Kwinana.

**Election Day** means the day fixed under the Act 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.

**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 (section 4.87(3) of the Act);
- b) Any materials exempted under Regulation 78 of the *Local Government (Elections) Regulations 1997*; or
- c) Any materials produced by the City 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** includes gatherings for the purpose of discussion, review, acknowledgement, communication, consultation, celebration, or promotion, of any matter relevant to the City 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 City or an external entity.

**Extraordinary Circumstances** includes circumstance that requires the Council to make or announce a Significant Local Government Decision during the Caretaker Period because, in the CEO's opinion, delaying the decision or announcement to occur after the Caretaker Period has reasonable potential to:

- a) Incur or increase legal, financial and/or reputational risk; or
- b) Cause detriment to the strategic objectives of the City of Kwinana.

**Significant Local Government Decision** includes any decision:

- a) Relating to the employment, remuneration or termination of the CEO or any other designated 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.
- b) Relating to the City entering into a sponsorship arrangement with a total City 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.
- c) Relating to the City entering into a commercial enterprise as defined by section 3.59 of the Act.
- d) That would commit the City 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.
- e) To prepare a report, initiated by the City, an Elected Member, candidate, or member of the public that, in the CEO's opinion, may be perceived as or is actually an election campaign issue.

- f) Initiated through a Notice of Motion by an Elected 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 in sub-clauses (a) to (e) above.
- g) 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.
- h) That initiates or adopts a new Local Planning Scheme, amendment to a Local Planning Scheme or Planning Policy; or
- i) Significant Local Government Decision does NOT include any decision necessary in response to an Emergency, either declared by the State or Federal Government or by the Mayor in accordance with section 6.8(1)(c) of the Act.

**Caretaker Protocol** means the practices or procedures prescribed in this policy.

**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.

**Significant Expenditure** means expenditure that exceeds 0.01% of the City's annual budgeted revenue (exclusive of GST) in the relevant financial year.

**Returning Officer** means the Returning Officer appointed under section 4.20 of the Act.

**City** means City of Kwinana

## 6. Policy

### 6.1 Caretaker Period Protocols – Decision Making

The CEO will ensure that:

- a) At least 30-days prior to a Caretaker Period, the CEO will advise Elected 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.

#### 6.1.1 Scheduling significant Local Government decisions

- a) During a Caretaker Period, unless Extraordinary Circumstances apply, the CEO will reasonably ensure that:
  - i. Council or Committee Agenda, do not include reports and/or recommendations that constitute Significant Local Government Decisions; and
  - ii. Council Forums, Workshops or Briefings, do not list for discussions, matters that relate to Significant Local Government Decisions.
- b) The CEO shall reasonably ensure that, unless Extraordinary Circumstances apply, Significant Local Government Decisions are either:
  - i. Considered by the Council prior to the Caretaker Period; or
  - ii. Scheduled for determination by the incoming Council.

- c) The CEO shall reasonably ensure that, unless Extraordinary Circumstances 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 Local Government Decision or an election campaign issue.

### **6.1.2 Council reports electoral caretaker period policy statement.**

#### Extraordinary Circumstances

- a) Council Reports

Where, during a Caretaker Period, the CEO determines that Extraordinary Circumstances apply, the CEO may submit a report on a Significant Local Government Decision for Council's consideration, subject to the report including:

- i. 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.
- ii. An Electoral Caretaker Period Policy Statement, which details why Extraordinary Circumstances apply.

- b) Council Forums, Workshops or Briefings

Where, during a Caretaker Period, the CEO determines that Extraordinary Circumstances apply, the CEO may include matters relating to a Significant Local Government Decision for Elected 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

### **6.1.3 Managing CEO employment**

This policy prohibits Significant Local Government 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:

- a) The Council may consider and determine:

- i. CEO's leave applications.
- ii. appoint an Acting CEO, where necessary.
- iii. suspend the current CEO, where appropriate and in accordance with the terms of their contract

- b) The Council may not initiate a new CEO recruitment process or initiate or undertake a CEO performance review process, during a Caretaker Period.

### **6.1.4 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 Local Government Decision or election campaign issue and if so, refer the matter to the CEO for review and consideration.

## **6.2 Caretaker Period Protocols – Candidates**

Candidates, including Elected 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 of Kwinana's public information in accordance with section 5.94 of the Act.

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.

Elected Members nominating for re-election, may access information and assistance regarding the City of Kwinana'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 Elected 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.

### **6.2.1 Candidate requests on behalf of electors, residents, or ratepayers**

Where a Candidate, including Elected Members who have nominated for re-election, 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 and will also advise the candidate of the outcome.

### **6.2.2 Candidate campaign electoral materials**

Candidates, including Elected Members who have nominated for re-election, should note that the City of Kwinana's official crest or logo may not be used in campaign Electoral Materials.

Candidates and/or Elected Members are permitted to publish campaign material on their own behalf but cannot claim for that material to be originating from or authorised by the City, e.g., branding and/or Logo.

### **6.2.3 Candidate attendance at meetings**

To ensure equitable access to information about Council's decision making during a Caretaker Period, the CEO will encourage Candidates, who are not sitting Elected Members, to attend Ordinary and Special Council Meetings (if open to the public) called and convened during a Caretaker Period; also advising each Candidate where to locate a copy of the meeting agenda at the time it is distributed to Elected Members.

Ordinary Council Meeting dates during the Caretaker Period will be provided to all Candidates at the time of their nomination.

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.



## **6.3 Elected Member caretaker period protocols**

### **6.3.1 Access to information and advice**

During a Caretaker Period all Elected Members will scrupulously avoid using or accessing City information, resources or employee resources and expertise for the purpose of gaining electoral advantage or disadvantage relevant to their own candidacy or any other person's candidacy.

During a Caretaker Period, all Elected 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 Elected Members).

### **6.3.2 Media and publicity**

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

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

### **6.3.3 Elected Member business cards, City printed materials.**

Elected Members must ensure that City business cards and Local Government printed materials are only used for purposes associated with their role as an Elected Member, in accordance with section 2.10 of the Act.

Elected 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.

### **6.3.4 Elected Member participation in event and functions**

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

### **6.3.5 Elected Member delegates to external organisations**

At any time, including times outside of a Caretaker Period, Elected 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.

### **6.3.6 Elected Member addresses/speeches**

Excluding the Mayor and Deputy Mayor, when fulfilling their functions prescribed in sections 2.8 and 2.9 of the Act, Elected 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 of Kwinana, unless expressly authorised by the CEO.

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

### **6.3.7 Elected Member misuse of Local Government resources**

An Elected Member who uses City resources for the purpose of persuading electors to vote in a particular way is a misuse of Local Government resources in breach of the *Local Government (Rules of Conduct) Regulations 2007*.

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:

- employee time or expertise
- City provided equipment
- information and communication technologies
- stationery
- hospitality
- images
- communications
- services
- reimbursements
- allowances provided by the City.

City employees are prohibited from undertaking any tasks connected directly or indirectly with an election campaign and must avoid actions that may create a perception that they are assisting Elected Members with their campaign.

## **6.4 City publicity, promotional and civic activities protocols**

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 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 City initiatives will be, where reasonably practicable, avoided during the Caretaker Period, including the announcement of Significant Local Government Decisions, 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 Local Government Decision announcement is necessary during a Caretaker Period.



#### **6.4.1 Civic events and functions**

The City 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 Elected 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 Elected Members would usually be invited, it will be limited to those that the CEO considers essential to the operation of the City, and must not be considered relevant to, or likely to influence the outcome of an election.

#### **6.4.2 City publications and communications**

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

- a) may, or be perceived to, persuade voting in an election.
- b) is specific to a candidate or candidates, to the exclusion of other candidates; or
- c) draws focus to or promotes a matter which is a Significant Local Government Decision, 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.

#### **6.4.3 City website and social media content**

1. During the Caretaker Period, this policy applies to content proposed for publication on the City of Kwinana's website and social media channels.

Website and social media content regarding Elected Members will be limited to: Elected 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 Elected 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 section 4.49(b) of the Act, may also be published on the City of Kwinana'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 Local Government Decisions or election campaign issues will not be published during a Caretaker Period unless Exceptional Circumstances apply.
4. Content posted by the public, candidates, or Elected Members on the City of Kwinana's social media channels, which is perceived as candidate election campaign material or promotes a candidate or candidates will be removed.
5. No media advice will be provided in relation to election issues or regarding publicity that involves an Elected Member who is a pre-selected Candidate or has nominated in a local, State or Federal election.

#### 6.4.4 Community consultation

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

#### OFFICER USE ONLY

Officers may amend this section without council approval.

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