



## (C3) CARETAKER (ELECTORAL PERIOD)

### POLICY OBJECTIVE

This policy establishes protocols for the purpose of avoiding actual and perceived advantage or disadvantage to a candidate in a Government Election (**Federal, State, or Local**) through the use of public resources or decisions made by the Council or administration on behalf of the Shire of Derby/West Kimberley (Shire) during the 'Caretaker Period' prior to an election.

As the policy captures all three levels of Australian Government election caretaker periods, not all components of this policy will apply in respect to every election level. Application will be dependent on the circumstances that prevail for each particular election level.

### 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 Shire;
- (e) Discretionary community consultation;
- (f) Events and functions, held by the Shire or other organisations;
- (g) Use of the Shire's resources;
- (h) Access to information held by the Shire.

### POLICY STATEMENT

#### 1. Definitions

'Candidate' means a Council Member or Employee who has received 'political party endorsement' for an upcoming election, or who has officially nominated as a candidate for an upcoming election, including Council Members who have nominated for re-election.

'Caretaker Period' means:

- (a) **For Federal and State Government Elections:** the period of time prior to an Election Day, specifically being the period commencing from the earlier of the Candidate's official 'political party endorsement' for the upcoming election, or the Candidate's official nomination as a candidate, until 6.00pm on Election Day; and
- (b) **For Local Government Elections:**

For Councillors and Candidates	For the Shire of Derby/West Kimberley
<b>Commencement:</b> From the time/day of the Candidate's official nomination in any Shire election.	<b>Commencement:</b> From the time/day that Elected Member nominations open for any Shire election.
<b>Conclusion:</b> The day after the day on which the returning officer declares the result of the relevant election; or if there is no election then the day after the close of nominations.	

'CEO' means the Chief Executive Officer of the Shire.



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**‘Election Day’** means the day fixed for the holding of any poll needed for an election.

**‘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; or
- (b) Any materials exempted under Regulation 78 of the *Local Government (Elections) Regulations 1997*; or
- (c) Any materials produced by the Shire, the State or the Federal Government, 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 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.

**‘Extenuating Circumstances’** including a 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 Shire.

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

- (a) Relating to the employment, remuneration or termination of the CEO or any other designated Senior Employee [s.5.37], 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 Shire entering into a sponsorship arrangement with a total Shire 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 Shire entering into a commercial enterprise as defined by Section 3.59 of the *Local Government Act 1995*;
- (d) That would commit the Shire 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 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;
- (f) 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 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.



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- (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 Shire President in accordance with s.6.8(1)(c) of the *Local Government Act 1995*.

**‘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 \$50,000 (exclusive of GST).

## **2. Caretaker Period Protocols - Decision Making**

The CEO will ensure that:

- (a) As soon as practical after awareness is known, they 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 endorsement or nomination for election, to ensure their awareness of the protocols and equitable access requirements.

### **2.1 Scheduling Significant Local Government Decisions**

1. During a Caretaker Period, unless Extenuating Circumstances apply, the CEO will reasonably ensure that:
  - a) Council or Committee Agenda, do not include reports and/or recommendations that constitute Significant Local Government Decisions; and
  - b) Council Forums, Workshops or Briefings, do not list for discussions matters that relate to Significant Local Government Decisions.
2. The CEO shall reasonably ensure that, unless Extenuating Circumstances apply, Significant Local Government Decisions are either considered by the Council prior to, or after, the conclusion of the Caretaker Period.
3. The CEO shall reasonably ensure that, unless Extenuating 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.

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

#### **2.2.1 Extenuating Circumstances**

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

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



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- 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 Extenuating Circumstances apply.

## 2. Council Forums, Workshops or Briefings

Where, during a Caretaker Period, the CEO determines that Extenuating Circumstances apply, the CEO may include matters relating to a Significant Local Government Decision for Council Member discussion at Council Forums, Workshops or Briefings.

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

## 2.3 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:

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.

## 2.4 Delegated Authority Decision Making in Extenuating 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 in accordance with clause 2.1(3) above.

## 3. Caretaker Period Protocols - Candidates

Candidates 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.

Candidates 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*].



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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.

### **3.1 Candidate Requests on behalf of Electors, Residents or Ratepayers**

Where a Candidate requires the assistance of the Administration to respond to a request made by an Elector, Resident or Ratepayer, then the Administration will (if applicable) provide the response directly to the requesting Elector, Resident or Ratepayer and will also advise the candidate of the outcome.

### **3.2 Candidate Campaign Electoral Materials**

Candidates 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.

### **3.3 Local Government Candidate attendance at Local Government Meetings**

To ensure equitable access to information about Council's decision making during a Caretaker Period, the CEO shall ensure that Candidates to local government elections (only) 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. Council Member Caretaker Period Protocols**

### **4.1 Access to Information and Advice**

During a Caretaker Period, Candidates and all other Council Members will scrupulously avoid using or accessing Shire 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, Candidates and 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).

### **4.2 Media and Publicity**

During a Caretaker Period, all Candidate and Council Member requests for media advice or assistance will be referred to the CEO for review.

The CEO will only authorise 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 Candidate, or the candidacy of another person.

### **4.3 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*.



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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.

#### **4.4 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.

#### **4.5 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 organisations 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.

#### **4.6 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 are Candidates, 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.

#### **4.7 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 a "misuse of Local Government resources" breach in accordance with Regulation 8 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, Shire provided equipment, information and communication technologies, stationery, hospitality, images, communications, services, reimbursements and allowances provided by the Shire.

#### **4.8 Council Member Leave of Absence - applying from the issue of Writs**

Elected Member Candidates at State or Federal Government elections (only) must take leave of absence from all aspects of their role as a Councillor from the time of the issue of Writs, until the electoral poll for the seat the Councillor has nominated for, is declared by the Returning Officer.

### **5. 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 promotions 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 Shire initiatives will be, where reasonably practicable, avoided during the



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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.

## 5.1 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 are Candidates.

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

## 5.2 Shire Publications and Communications

No Shire publications and communications distributed during a Caretaker Period can 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 Local Government Decision 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.

## 5.3 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 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 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.

## 5.4 Community Consultation

The Shire 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.

Policy Details			
<b>Original Adoption date:</b>	29 October 2020 (Item. 10.8 Res. 185/20)	<b>Review Frequency:</b>	3 years
		<b>Next Review Due:</b>	February 2027
<b>Policy Implementing Officer or Team:</b>	Executive Services Coordinator	<b>Policy Reviewer:</b>	Deputy Chief Executive Officer
<b>Legislative Head of Power (Act, Regulation, or Local Law):</b>	Local Government Act 1996 Sections s4.87 Printing and publication of electoral material, s5.93 Improper use of information and s.5.103 Model code of conduct for council members, committee members and candidates of the Local Government Act 1996;  Regulation 8 of the Local Government (Rules of Conduct) Regulations 1996. Local Government (Model Code of Conduct) Regulations 2021 r.17 Misuse of local government resources		
<b>Related Documents (other Policies, Operational Procedures, Delegations, etc.):</b>	Code of Conduct for Council Members, Committee Members and Candidates		
Version Control Council Meeting Review Details:			
<b>Review #:</b>	<b>Council Meeting Date:</b>	<b>Item/Resolution#:</b>	
1.	24 June 2021	Item 11.2 Res. 57/21	
2.	24 February 2022	Item 11.5 Res. 07/22	
3.	19 January 2024	The Director Strategic Business utilised AUTHO33 Local Government Act 1995 s.5.45 Other matters relevant to delegations under this Division (Acting Through on behalf of the Chief Executive Officer), to make minor changes using delegation 1.1.34 Minor Amendments to Policies and Delegations. Synergy Record No. N21078	
4.	29 February 2024	Item 12.3 Res. 09/24	