

Electoral Caretaker Period Policy

Objective

The primary purpose of the Policy is to Complement the Caretaker Period provisions prescribed in the *Local Government Act 1995* (the Act), and the *Local Government (Functions and General) Regulations 1996*.

Scope

This policy applies during an Electoral Caretaker Period to Council Members, Candidates and Employees in relation to:

- (a) Decisions made by the Council;
- (b) Decisions made under delegated authority;
- (c) Decisions made administratively;
- (d) Promotional materials published by the Town;
- (e) Discretionary community consultation;
- (f) Events and functions, held by the Town or other organisations;
- (g) Use of the Town's resources; and
- (h) Access to information held by the Town.

Policy Statement

- (a) This policy provides the requirements and protocols to avoid actual and perceived advantages or disadvantage to a candidate in a Local Government Election.
- (b) This includes actual and perceived advantages or disadvantage from the use of public resources or arising from decisions made by the Council, candidates or administration, on behalf of the Town of Bassendean (Town), during the Caretaker Period.

Definitions

Caretaker Period means the period prior to an Election Day, specifically being the period from the close of nomination, 37 days prior to Election Day (pursuant to section 4.49(a), *Local Government Act 1995*) until 6.00 pm on Election Day.

CEO means the Chief Executive Officer of the Town of Bassendean.

Election Day means the day fixed under the *Local Government Act 1995* for the holding of any poll needed for an election. **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 (section 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 Town 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 the election.

Significant Local Government Acts

Section 3.73 of the Act prohibits Local Governments from doing, or deciding to do, any 'significant acts' during a caretaker period. Significant acts are specified in s. 3.73 of the Act and r.3A of the Local Government (Functions and General) Regulations 1996, including:

- (a) Making a local law (including an amendment or repeal local law)
- (b) Entering into, renewing or terminating, the employment contract of the CEO or a senior employee
- (c) Entering into a major land transaction, or a land transaction that is preparatory to entry into a major land transaction
- (d) Commencing a major trading undertaking
- (e) Entering into a contract, or other agreement or arrangement, with consideration over \$250,000 or acquiring or disposing of property valued over \$250,000
- (f) Calling for tenders, or tender exempt procurement (including through the PSP), with an expected consideration above \$250,000
- (g) Establishing, amending the establishment agreement of, winding up or withdrawing from, a regional local government
- (h) Forming, amending the charter of, winding up, or withdrawing from, a regional subsidiary
- (i) Making prescribed decisions under the *Planning and Development Act 2005* and *Planning and Development (Local Planning Scheme) Regulations 2015*
- (j) Publicly inviting persons to apply to join a panel of pre-qualified suppliers
- (k) Deciding to do any of the above

Events and Functions including gatherings for the purpose of discussion, review, acknowledgement, communication, consultation, celebration or promotion, of any matter relevant to the Town or its stakeholders. Events and Functions may take the form of conferences, workshops, forums, launches, promotional activities, dinners, receptions, or gatherings by the Town or by an external entity.

Extraordinary Circumstances includes a circumstance that requires the Council to make or announce a Significant Local Government Act 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 incur or increase legal, financial and/or reputational risk or cause detriment to the strategic objectives of the Town.

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 or campaign issue, but does not include statutory consultation or submission periods prescribed in a written law.

Significant Expenditure means expenditure that exceeds \$150,000 (excluding GST) and that has not been budgeted for in the Town's Annual Budget.

Scheduled Council Meetings

- (a) No Ordinary Council Meeting shall occur during a Caretaker Period.
- (b) Where Extraordinary Circumstances prevail, a special meeting of Council may be called and convened in accordance with sections 5.4 and 5.5 (2) of the *Local Government Act 1995*.

Caretaker Period Protocols - Decision Making

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) A copy of this Policy is provided to Candidates at the time of nomination for election.

Scheduling Significant Local Government Acts

During a Caretaker Period, unless Extraordinary Circumstances apply, the CEO will reasonably ensure that:

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

is not exercised in circumstances where the exercise of that delegated authority relates to a Significant Local Government Act or an election campaign issue.

Council Reports Electoral Caretaker Period

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.
- (b) The CEO report must include details of why Extraordinary Circumstances apply, stating reasons why a decision is necessary.
- (c) **Council Forums, Workshops or Briefings:** Where the CEO determines that Extraordinary Circumstances apply the CEO may include matters relating to a Significant Local Government Decision for Council Member discussion at Council Forums, Workshops or Briefings.
- (d) The CEO is required to provide Council with advice as to why Exceptional Circumstance apply.
- (e) CEO reports and advice regarding Extraordinary Circumstances is retained as a Local Government record.

Managing CEO Employment

- (a) This Policy prohibits Significant Local Government Decisions relating to the employment, remuneration or termination of the CEO during a Caretaker Period.
- (b) The Council is required to fulfil its obligations as the CEO's employer regardless of a Caretaker Period.
- (c) Therefore, during a Caretaker Period, the Council may consider and determine:
 - i) CEO leave applications;
 - ii) appointment of an Acting CEO;
 - iii) suspension of the CEO, where appropriate and in accordance with the terms of the employment contract.
- (d) The Council may not initiate a CEO recruitment process, or initiate or undertake a CEO performance review process, during a Caretaker Period.

Delegated Authority Decision Making in Extraordinary Circumstances

- (a) 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 Act or election campaign issue and if so, refer

the matter to the CEO for review and consideration in accordance with Scheduling Significant Local Government Acts (d) above.

Caretaker Period Protocols – Candidates

- (a) Candidates, including Council Members who have nominated for re-election, relevant to an Election Day or Extraordinary Election Day, will be provided equitable access to the Town's public information in accordance with s 5.94 of the *Local Government Act 1995*.
- (b) The CEO will ensure the equal provision of assistance and advice to all candidates as part of the conduct of the election.
- (c) Council Members nominating for re-election, may access information and assistance regarding the Town'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 Town. [refer section 5.92 of the *Local Government Act 1995*].
- (d) All election process enquiries from Candidates, or 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.

Candidate Requests on behalf of Electors, Residents or Ratepayers

- (a) Where a Candidate, or a Council Member who has nominated for re-election, requires assistance of the Administration to respond to a request made by an Elector, Resident or Ratepayer, the Administration will provide the response directly to the requesting Elector, Resident or Ratepayer and advise the Candidate of the outcome.

Candidate Campaign Electoral Materials

- (a) The Town's official crest or logo may not be used in campaign Electoral Materials by Candidates, or Councillors nominating for re-election, without the expressed permission of the CEO.

Candidate attendance at Meetings

- (a) The CEO will ensure that Candidates, who are not sitting Council Members, receive equal access to information about Council's decision-making during an Electoral Caretaker Period.
- (b) This includes information about public Ordinary and Special Council Meetings convened during a Caretaker Period.
- (c) Candidates will be provided a copy of the meeting agenda at the time it is

distributed to Council Members.

- (d) For transparency and the benefit of the public gallery, Candidates are required to identify themselves as an election candidate prior to asking a question or making a statement at a public Council or Committee meeting.

Council Member Caretaker Period Protocols

Access to Information and Advice:

- a) All Council Members will scrupulously avoid using or accessing Town information, resources or employee resources and expertise for the purpose of gaining electoral advantage or disadvantage relevant to the Council Member's candidacy or any other Candidates candidacy *[refer s 5.93 of the Local Government Act 1995]*.
- b) The CEO will review all Council Member requests for information or advice, and where the subject of the information or advice is considered to relate to an election campaign issue, the CEO will:
 - i) make a determination; or
 - ii) refer the request for Council's determination.
- c) Council's determination must consider whether the information or advice is:
 - i) not to be provided; or
 - ii) provided to one candidate; or
 - iii) provided to all candidates, which includes candidates who are not current Council Members.

Media and Publicity

- (a) The CEO will review all requests for media advice or assistance from Council Members, including Council Members who have nominated for re-election.
- (b) 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 Town's objectives or operations and not related to an election campaign purpose or issue or to the Council Member's candidacy or the candidacy of another person.

Council Member Business Cards, Printed Materials

- (a) Council Members must ensure that Town's business cards and Local Government printed materials are used only for purposes associated with the role as Councillor, pursuant to s 2.10 *Local Government Act 1995*.
- (b) Council Members are prohibited from using Town's business cards or printed materials at any time, including times outside a Caretaker Period, for

any election campaign purpose, to support candidacy or the candidacy of another person.

Council Member Participation in Events and Functions

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

Council Member Delegates to External Organisations

- (a) At any time, including times outside of a Caretaker Period, Council Members who are the Council 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.

Council Member Addresses or Speeches

- (a) 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 Town, unless expressly authorised by the CEO.
- (b) 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.

Council Member Misuse of Local Government Resources

- (a) This prohibition on misuse of Local Government Resources for electoral purposes applies at all times and is not only applicable to a Caretaker Period.
- (b) For clarity, Local Government resources includes, but is not limited to: employee time or expertise, Town's provided equipment, information and communication technologies, stationery, hospitality, images, communications, services, reimbursements and allowances provided by the Town.

Publicity, Promotional and Civic Activities

- (a) Publicity campaigns and promotional activities during a Caretaker Period

may be undertaken only for the purposes of:

- i) Promoting the Town's 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
- ii) Conducting the Election and promoting Elector participation in the Election.
- iii) All other, publicity and promotional activities of Town initiatives will be, where reasonably practicable, avoided during the Caretaker Period, including the announcement of Significant Local Government Acts, made prior to the commencement of a Caretaker Period or proposed to be made after a Caretaker Period.
- iv) The CEO may determine if Exceptional Circumstances apply and if a Significant Local Government Act announcement is necessary during a Caretaker Period.

Civic Events and Functions

- (a) The Town 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 have nominated for re- election.
- (b) Where the Town is required to schedule a Civic Event or Function during a Caretaker Period at which Council Members would usually be invited, all Candidates will also be invited to attend and will be acknowledged as candidates immediately following any acknowledgement provided to Council Members.
 - (i) Candidates will be introduced at the function immediately following the introduction of Council Members.

Publications and Communications

- (a) Publications and communications distributed during a Caretaker Period must not include content that:
 - i) may actually, or be perceived to, persuade voting in an election; or
 - ii) is specific to a candidate or candidates, to the exclusion of other candidates;
 - iii) draws focus to or promotes a matter which is a Significant Local Government Act or which is an electoral campaign issue.
- (b) 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.

Website and Social Media Content

- (a) During the Caretaker Period, this Policy applies to content proposed for publication on the Town's website and social media channels.
- (b) Website and social media content regarding Council Members will be limited to: Council Member names, contact details, membership of committees and Council appointments as Town's 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.
- (c) The Candidate Election Profiles prescribed in s 4.49(b) of the *Local Government Act 1995*, may also be published on the Town's website and social media.
- (d) Website and social media content, published prior to a Caretaker Period, will not be subject to this Policy.
- (e) New website or social media content which relates to Significant Local Government Acts or election campaign issues will not be published during a Caretaker Period, unless Exceptional Circumstances apply.
- (f) Content posted by the public, candidates or Council Members on the Town's social media channels, which is perceived as candidate election campaign material or promotes a candidate or candidates will be removed.

Community Consultation

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

Council Committees

- (a) At the last Ordinary Council Meeting prior to the commencement of caretaker period, the Council may, in accordance with the provisions of section 5.11, *Local Government Act 1995*, resolve to disband all established Committees pursuant to section 5.8, *Local Government Act 1995*.

Document responsibilities:			
Owner:	Chief Executive Officer	Owner Business Unit:	Office of the Chief Executive Officer
Inception date:	August 2019 (OCM 27/08/2019) Item 10.9	Decision maker:	Council
Review date:	August 2025 (OCM 26/08/25) Item 12.6 Bi-Annually	Repeal and replace:	Council Policy 6.25 of 24 May 2018: Election Caretaker Periods.
Compliance requirements:			
Legislation	<ul style="list-style-type: none"> ▪ <i>Local Government Act 1995 (Sn's 4.87, 5.93 & 5.103)</i> ▪ <i>Regulation 8 of the Local Government (Rules of Conduct) Regulations 1996</i> 		