

Election Caretaker Period Policy

Responsible Division	Office of the CEO
Responsible Business Unit	Governance and Strategy
Responsible Officer	Manager Governance and Strategy
Affected Business Units	All
ECM Document Set ID	3228088

Purpose

To ensure compliance and alignment with the Caretaker Period provisions in the *Local Government Act 1995*, the *Local Government (Functions and General) Regulations 1996*, and the requirements of the *Code of Conduct for Council Members, Committee Members and Candidates* and *Code of Conduct for Employees*.

Definitions

For the purpose of this policy —

Candidate means a candidate in a local government election but does not include a Council Member who is also a candidate in a local government election.

Caretaker Period, as defined by section 1.4A of the *Local Government Act 1995*, means a period that:

- (a) begins at the close of nominations (as defined in section 4.49(a)) for a relevant election for the local government (being 37 days before the Election Day); and
- (b) ends:
 - (i) on the day after the day on which the returning officer declares the result of the relevant election under section 4.77; or
 - (ii) if section 4.57(1) applies to the relevant election - on the day after the day on which the close of nominations falls; or
 - (iii) if section 4.58(1) applies to the relevant election - on the day after the day on which the candidate dies.

Council Member means the Mayor, Deputy Mayor and Councillors.

Election Day means the day fixed under the *Local Government Act 1995* for the holding of an election or any other poll.

Electoral Material means any advertisement, handbill, pamphlet, notice, letter or article that is intended or calculated to affect the result in an election but does not include:

- (a) an advertisement in a newspaper announcing the holding of a meeting in accordance with section 4.87(3) of the *Local Government Act 1995*;
- (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 means gatherings of internal and external stakeholders to discuss, review, acknowledge, communicate, celebrate or promote a program, strategy or issue which is of relevance to the City and its stakeholders and may take the form of conferences, workshops, forums, launches, promotional activities, social occasions such as dinners and receptions.

Extraordinary Circumstances means a circumstance that in the Chief Executive Officer'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,

and that is not considered a Significant Act.

Public Consultation means a process which involves an invitation to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy.

Significant Act in accordance with section 3.73(1) of the *Local Government Act 1995*, means any of the following:

- (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 (as prescribed by regulations 3A(2), (3) and (4) of the *Local Government (Functions and General) Regulations 1996*);

Note: Regulations 3A(2), (3) and (4) of the Local Government (Functions and General) Regulations 1996 states:

- (2) 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).
- (3) If a local government intends to enter into 2 or more contracts in circumstances such that the desire to avoid the requirements of subregulation (2) is a significant reason for not dealing with the matter in a single contract, for the purposes of paragraph (f), entering into any of the contracts is a significant act.
- (4) In subregulations (2) and (3) -
- 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 (as prescribed by regulation 3A(5) of the *Local Government (Functions and General) Regulations 1996*);

Note: Regulation 3A(5) of the Local Government (Functions and General) Regulations 1996 states:

- (5) For the purposes of paragraph (g), inviting a tender is a significant act if the tender -
- (a) is required to be publicly invited under regulation 11(1) or 12(2); or
 - (b) would be required to be publicly invited under regulation 11(1) or 12(2) but for regulation 11(2).

- (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 (as prescribed by regulations 3A(6) and (7) of the *Local Government (Functions and General) Regulations 1996*).

Note: Regulation 3A(6) and (7) of the Local Government (Functions and General) Regulations 1996 states:

- (6) For the purposes of paragraph (i), each of the following is a significant act -
- (a) each of the following under Part 3 Division 4 of the 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;
 - (vii) winding up, or withdrawing from, a regional subsidiary;
 - (b) commencing the preparation of any of the following under the *Planning and Development (Local Planning Schemes) Regulations 2015 Part 3* -
 - (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;
 - (c) passing a resolution of the kind referred to in the *Planning and Development (Local Planning Schemes) Regulations 2015 regulation 19(1)*;
 - (d) 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);
 - (e) commencing a review of a local planning scheme under the *Planning and Development (Local Planning Schemes) Regulations 2015 regulation 65*;
 - (f) 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)*;

- (g) *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 -*
- (i) *resolving to prepare or amend a local planning policy;*
 - (ii) *commencing the preparation of a notice of revocation in respect of a local planning policy;*
- (h) *publicly inviting persons to apply to join a panel of pre-qualified suppliers under Part 4 Division 3;*
- (i) *deciding to do anything referred to in paragraphs (a) to (h) of this subregulation.*
- (7) *Subregulation (6)(b) to (g) do not apply to anything done, and subregulation (6)(i) does not apply to 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.*

Policy Statement

The primary purpose of the Policy is to:

- complement the Caretaker Period provisions prescribed in the *Local Government Act 1995*, and the *Local Government (Functions and General) Regulations 1996*;
- prevent the use of City resources in ways that are seen as advantageous to, or promoting, the City's current Council Members who are seeking re-election;
- ensure City employees act impartially in relation to all local government election Candidates; and
- provide for better decision-making and greater transparency and accountability in the City's operations as prescribed by section 1.3 of the *Local Government Act 1995*.

The policy applies to the Caretaker Period to cover:

- decisions made by the Council that are deemed Significant Acts under legislation;
- promotional materials published by the City;
- attendance and participation of Council Members and Candidates at functions and events;
- use of the City's resources; and
- access to information held by the City.

This policy applies to Council Members, Candidates and City employees.

Scheduling of Council Meetings

No Ordinary Council Meeting shall occur during a Caretaker Period.

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*.

Significant Act Decisions

In accordance with section 3.73(2) of the *Local Government Act 1995*, the City must not do a Significant Act during a Caretaker Period.

Notwithstanding, sections 3.73(4) and (5) of the *Local Government Act 1995* applies in circumstances where the City does a Significant Act during a Caretaker Period.

Announcements of earlier decisions relating to a Significant Act may be made during a Caretaker Period, however as far as practicable any such announcements should be made before the Caretaker Period begins.

Role of the Chief Executive Officer in Implementing Caretaker Period Practices

The role of the Chief Executive Officer in implementing the caretaker practices outlined in this Policy is as follows:

- (a) The Chief Executive Officer 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 *Local Government Act 1995* and the *Local Government (Functions and General) Regulations 1996*, 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 Chief Executive Officer will ensure as far as possible, Candidates are provided with a copy of this Policy and the Caretaker Period requirements under the *Local Government Act 1995* and the *Local Government (Functions and General) Regulations 1996* following their accepted nomination for a local government election.

The Chief Executive Officer will ensure, as far as possible, that any Significant Act decisions required by the Council are scheduled for Council decision prior to the Caretaker Period, or deferred after the Caretaker Period.

Appointment of Acting Chief Executive Officer

In the case of an emergency, the Council may act to appoint an Acting Chief Executive Officer, or suspend the current Chief Executive Officer (in accordance with the terms of their Employment Contract), pending the election, after which date a permanent decision can be made.

Prohibition on Publishing Electoral Material

The City shall not print, publish or distribute, or cause, permit or authorise others to print, publish or distribute on behalf of the City any advertisement, handbill, pamphlet or notice that contains 'electoral material' during the Caretaker Period.

Without limiting the generality of the definition of 'electoral material', material will be considered to be intended or likely to affect voting in the election if it contains an express or implicit reference to, or comment on:

- (a) the election, other than administrative information;
- (b) a candidate in the election; or
- (c) an issue submitted to, or otherwise before, the voters in connection with the election.

Candidate and/or Council Member Publications

Candidates and/or Council 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.

Election Announcements

This Policy does not prevent publications, promotions or marketing material by the City that announces the holding of the election or which may relate to the election process itself.

City of Bayswater Publications

Any reference to Council Members in the City's publications printed, published or distributed during the Caretaker Period must not include promotional text. Any of the City's publications that are potentially affected by this Policy will be reviewed by the Chief Executive Officer to ensure that any circulated, displayed or otherwise publicly available material during the Caretaker Period does not contain material that may be construed as 'electoral material'.

City of Bayswater Website

During the Caretaker Period the City's website will not contain any material which is precluded by this Policy. Any references to the election will only relate to the election process. Information about Council Members will be restricted to names, contact details, titles, membership of special committees and other bodies to which they have been appointed to by the Council.

Public Consultation During the Caretaker Period

It is prohibited under this policy for public consultation to be undertaken during the Caretaker Period (either new consultation or existing), unless the consultation is a mandatory statutory process, or prior approval is given by the Chief Executive Officer.

Attendance Public Events Hosted by External Bodies

Council Members may continue to attend events and functions hosted by external bodies during the Caretaker Period.

Attendance at City of Bayswater Organised Civic Events/Functions

Civic events/functions organised by the City and held during the Caretaker Period will be reduced to only those essential to the operation of the City and should not in any way be associated with any issues considered topical and relevant to the election.

All known Candidates are to be invited to civic events/functions organised by the City during the Caretaker Period, however, only sitting Council Members will be formally acknowledged at any such events/functions.

Addresses by Council Members

Council Members who are also candidates in an upcoming election should not, where possible, be permitted to make speeches or addresses at events/functions organised or sponsored by the City during the Caretaker Period. Council Members may make short welcome speeches at events and functions organised or sponsored by the City during the Caretaker Period subject to prior approval of the Chief Executive Officer.

Community and Advisory Groups

Council Members appointed to community groups, advisory groups and other external organisations (as representatives of the City) shall not use their attendance at meetings of such groups to either recruit assistance with electoral campaigning or to promote their personal or other candidates' electoral campaigns.

Use of City of Bayswater Resources

The City's *Code of Conduct for Council Members, Committee Members and Candidates* and the *Code of Conduct for Employees* provide the City's resources are only to be utilised for authorised activities (for example – prohibits the use of employees for personal tasks and prohibits the use of equipment, stationery, or hospitality for non-Council business). This includes the use of resources for electoral purposes. It should be noted that the prohibition on the use of the City's resources for electoral purposes is not restricted to the Caretaker Period.

The City's employees must not be asked to undertake any tasks connected directly or indirectly with an election campaign and are to avoid assisting Council Members and/or Candidates in ways that could create a perception that they are being used for electoral purposes. In any circumstances where the use of City resources might be construed as being related to a candidate's election campaign, advice is to be sought from the Chief Executive Officer.

Council Member Access to Information

During a Caretaker Period, Council Members are able to access City information relevant to the performance of their functions as a Council Member, under the *Local Government Act 1995* or other written law.

However, this access to information should be exercised with caution and limited to matters that the Council is dealing with, within the objectives and intent of this policy. Any City information so accessed that is not publicly available must not be used for election purposes.

Candidate Access to Information

All Candidates will have equal rights to access public information.

Council Member Request for Media Advice

Any requests for media advice or assistance from Council Members during the Caretaker Period will be referred to the Chief Executive Officer. No media advice will be provided in relation to election issues or in regard to publicity that involves specific Council Members. If satisfied that advice sought by a Council Member during the Caretaker Period does not relate to the election or publicity involving any specific Council Member(s), the Chief Executive Officer may authorise the provision of a response to such a request.

Publicity Campaigns

During the Caretaker Period, publicity campaigns, other than for the purpose of conducting (and promoting) the election will be avoided wherever possible. Where a publicity campaign is deemed necessary for a City activity it must be approved by the Chief Executive Officer. In any event, the City's publicity during the Caretaker Period will be restricted to communicating normal City activities and initiatives.

Media Attention

Council Members will not use their position to access City employees or resources to gain media attention in support of their or any other candidate's election campaign.

City of Bayswater Employees

During the Caretaker Period no City employee may make any public statement that relates to an election issue unless, the statement has been approved by the Chief Executive Officer.

Election Process Enquiries

All election process enquiries from Candidates, whether current Council Members or not, will be directed to the Returning Officer or, where the matter is outside of the responsibilities of the Returning Officer, to the Chief Executive Officer.

Related Legislation

Local Government Act 1995 (Division 5, Part 3)

Local Government (Functions and General) Regulations 1996 (Part 1B)

Local Government (Elections) Regulations 1996

Local Government (Model Code of Conduct) Regulations 2021

Code of Conduct for Council Members, Committee Members and Candidates for Local Government Elections

Code of Conduct for Employees

Related Documentation

Nil.

Document details

Relevant delegations Nil.

Risk evaluation Low

Strategic link Theme: Leadership and Governance
Goal L4: Communicate in a clear and transparent way
Provide the community with useful information about Council's policies, services and events and advise the community of engagement outcomes.

Council adoption 31 May 2016 **Resolution** 13.7

Reviewed/modified 28 August 2018 **Resolution** 13.12

Reviewed/modified 24 August 2021 **Resolution** 10.6.1.5

Reviewed/modified 22 October 2024 **Resolution** 10.5.2.14

Next review due	October 2028
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