



POLICY NO	CP/GOV-3106	
POLICY	Council Elections – Caretaker Period	
RESPONSIBLE DIRECTORATE	Governance	
RESPONSIBLE OFFICER	Chief Executive Officer	
COUNCIL ADOPTION	Date: 28 February 2017	Resolution No: 11611
REVIEWED/MODIFIED	Date: <u>27 July 2021</u>	Resolution No: <u>TBA</u>
	Date:	Resolution No:
REVIEW DUE	Date: <u>February 2019</u> <u>July 2023</u>	
LEGISLATION	Local Government Act 1995 – Part 4 Local Government (Elections) Regulations 1997	
RELATED POLICIES	N/A	
RELATED ORGANISATIONAL DIRECTIVES	N/A	

#### PURPOSE:

The purpose of this policy is to avoid the making of any major decisions by the Council, prior to an election, that would bind an incoming Council, prevent the use of public resources in ways that are seen as advantageous to, or promoting, the sitting Elected Members who are seeking re-election, or new candidates, and ensuring the Shire of Wyndham East Kimberley's administration acts impartially in relation to candidates.

This policy also prohibits an Elected Member from using a wide range of Council resources during their candidacy for Council, State or Federal election.

#### SCOPE:

this Policy applies to Elected Members and employees during the caretaker period to cover:

- a) Decisions that are made by the Council;
- b) Materials published by the Shire;
- c) Attendance and participation in functions and events;
- d) Use of the Shire's resources;
- e) Access to information held by the Shire.

## DEFINITIONS:

**Caretaker Period** means the period of time when the caretaker practices are in place prior to the election. The caretaker practices will apply from the close of nominations being 37 days prior to the Election Day in accordance with Section 4.49(a) of the *Local Government Act 1995*, until 6pm on Election Day.

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

**Electoral Material** means any digital communications, 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*.
- (c) Any materials produced by the Shire 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 Shire and stakeholders and may take the form of conferences, workshops, forums, launches, promotional activities, social occasions such as dinners and receptions.

**Extraordinary Circumstances** means a situation that requires a major policy decision of the Council during a local government caretaker period in the event that:

- (a) In the Chief Executive Officer's opinion, the urgency of the issue is such that it cannot wait until after the local government election;
- (b) There is a possibility of legal and/or financial repercussions if a decision is deferred; or
- (c) In the Chief Executive Officer's opinion, it is in the best interest of the Council and/or Shire for the decision to be made as soon as possible.

**Local Government Election** means all ordinary and extraordinary Councillor elections.

**Major Policy Decision** means any:

- (a) Decisions relating to the employment, termination or remuneration of the Chief Executive Officer or any other designated senior officer, other than a decision to appoint an Acting or Deputy Chief Executive Officer, or suspend the current Chief Executive Officer (in accordance with the terms of their contract), pending the election.
- (b) Decisions relating to the Shire entering into a sponsorship arrangement with a total Shire contribution value exceeding \$10,000 (excluding GST).
- (c) Irrevocable decisions that commit the Shire to substantial expenditure or significant actions, such as that which might be brought about through a Notice of Motion by an Elected Member.
- (d) Irrevocable decisions that will have a significant impact on the Shire of Wyndham East Kimberley or the community.

- (e) Reports requested or initiated by an Elected Member, candidate or member of the public that, in the Chief Executive Officer's opinion, may be perceived within the general community as an electoral issue that reflects upon the Council's decision-making process, and has the potential to call into question whether decisions are soundly based and in the best interests of the community.

**Pre-Selected Candidate** means the process by which a candidate is selected by a political party to contest an election for political office.

**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.

**Substantial Expenditure** means expenditure that exceeds 0.01% of the Shire annual budgeted revenue (inclusive of GST) in the relevant financial year.

## **POLICY STATEMENTS:**

### **PART 1 – INTRODUCTION**

#### **1.1 Application**

This Caretaker Policy applies to Elected Members, electoral candidates and employees of the Shire of Wyndham East Kimberley.

#### **1.2 Scheduling Consideration of Major Policy Decisions**

So far as is reasonably practicable, the Chief Executive Officer should avoid scheduling major policy decisions for consideration during a Caretaker Period, and instead ensure that such decisions are either:

- (a) Considered by the Council prior to the Caretaker Period; or
- (b) Scheduled for determination by the incoming Council.

#### **1.3 Decision Made Prior to a Caretaker Period**

This Policy only applies to actual decisions made during a Caretaker Period, not the announcement of decisions made prior to the Caretaker Period. Whilst announcement of earlier decisions may be made during a Caretaker Period, as far as practicable any such announcements should be made before the Caretaker Period begins.

### **PART 2 – IMPLEMENTATION OF CARETAKER PRACTICES**

#### **2.1 Role of the Chief Executive Officer in Implementing Caretaker 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 Elected Members and staff are aware of the Caretaker Policy and practices 30 days prior to the start of the Caretaker Period.
- (b) The Chief Executive Officer will ensure, as far as possible, that any major policy or significant decisions required by the Council are scheduled for Council resolution prior to the Caretaker Period or deferred where appropriate for determination by the incoming Council.
- (c) The Chief Executive Officer will endeavour to make sure all announcements regarding decisions made by the Council, prior to the Caretaker Period, are publicised prior to the Caretaker Period.

## **PART 3 – EXTRAORDINARY CIRCUMSTANCES REQUIRING EXEMPTION**

### **3.1 Extraordinary Circumstances**

The Chief Executive Officer may, where extraordinary circumstances prevail, permit a matter defined as a 'major policy decision' to be submitted to the Council. The Chief Executive Officer is to have regard to a range of circumstances, including but not limited to:

- (a) Whether the decision is 'significant';
- (b) The urgency of the issue (that is - can it wait until after the election);
- (c) The possibility of legal and/or financial repercussions if it is deferred;
- (d) Whether the decision is likely to be controversial; and
- (e) The best interests of the Shire of Wyndham East Kimberley.

### **3.2 Appointment or Removal of the Chief Executive Officer**

Whilst the definitions of this policy establishes that a Chief Executive Officer may not be appointed or dismissed during a Caretaker Period, 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 contract), pending the election, after which date a permanent decision can be made.

## **PART 4 - CARETAKER STATEMENT**

### **4.1 Caretaker Statement**

To ensure the Council complies with the commitment to appropriate decision making during the Caretaker Period a Caretaker Statement will be included in every report submitted to the Council for a decision.

The Caretaker Statement will specify one of the following:

- (a) "The recommended decision is not a 'Major Policy Decision' within the context of the Elections – Caretaker Period Policy."
- (b) "The recommended decision is a 'Major Policy Decision' within the context of the Elections – Caretaker Period Policy however; an exemption should be made due to extraordinary circumstances (insert the circumstances for making the exemption)".

## **PART 5 – SHIRE OF WYNDHAM EAST KIMBERLEY PUBLICATIONS**

### **5.1 Prohibition on Publishing Local Government Electoral Material**

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

### **5.2 Electoral Material Relevant to Prohibition**

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; or
- (b) A candidate in the election; or
- (c) An issue submitted to, or otherwise before, the voters in connection with the election.

### **5.3 Candidate and/or Elected Member Publications**

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 Shire. For example, use of the Shire of Wyndham East Kimberley logo is prohibited as is use of any of the Shire's photographs or images.

#### **5.4 Election Announcements**

This policy does not prevent publications by the Shire which merely announce the holding of the election or relate only to the election process itself.

#### **5.5 Shire of Wyndham East Kimberley Publications**

Any reference to Elected Members in the Shire's publications printed, published or distributed during the Caretaker Period must not include promotional text. Any of the Shire'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'.

#### **5.6 Shire of Wyndham East Kimberley Website**

During the Caretaker Period the Shire'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 Elected 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. Information about candidates on the Shire's website will be restricted to their candidate profiles only.

### **PART 6 - PUBLIC CONSULTATION DURING THE CARETAKER PERIOD**

#### **6.1 Prohibition**

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

### **PART 7 - ATTENDANCE AND PARTICIPATION AT EVENTS/FUNCTIONS/MEETINGS**

#### **7.1 Public Events Hosted by External Bodies**

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

#### **7.2 Shire of Wyndham East Kimberley Civic Events/Functions**

Civic events/functions organised by the Shire and held during the Caretaker Period will be reduced to only those essential to the operation of the Shire, 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 Shire during the Caretaker Period, however, only sitting Elected Members will be formally acknowledged at such events/functions.

#### **7.3 Addresses by Elected Members**

Elected Members that are also candidates should not, where possible, be permitted to make speeches or addresses at events/functions organised or sponsored by the Shire during the Caretaker Period. Elected Members may make short welcome speeches at events and functions organised or sponsored by the Shire during the Caretaker Period subject to prior approval of the Chief Executive Officer.

#### **7.4 Delegates to Community and Advisory Groups**

Elected Members appointed to community groups, advisory groups and other external organisations as representatives of the Shire 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.

### **7.5 Questions and Statements at Council or Committee Meetings**

All candidates, whether current Elected Members or not, are required to declare that they are a candidate for the upcoming election prior to asking questions or making a statement at Council or Committee Meetings.

## **PART 8 - THE USE OF THE SHIRE OF WYNDHAM EAST KIMBERLEY'S RESOURCES**

### **8.1 Use of Resources**

The Local Government (Rules of Conduct) Regulations 2007 provide that the Shire'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 Shire's resources for electoral purposes is not restricted to the Caretaker Period.

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

## **PART 9 - ACCESS TO COUNCIL INFORMATION AND ASSISTANCE**

### **9.1 Elected Members Access to Information**

During a Caretaker Period, Elected Members are able to access Council information relevant to the performance of their functions as an Elected Member. 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 Council information so accessed must not be used for election purposes.

### **9.2 Electoral Information and Assistance**

All candidates will have equal rights to access public information, such as the electoral rolls and information relevant to their election campaigns from the Shire administration. Information, briefing material and advice prepared or secured by staff for an Elected Member must be necessary to the carrying out of the Elected Member's role and must not be related to election issues that might be perceived to be of an electoral nature (refer to Part 8 of this policy).

Any assistance and advice provided to candidates as part of the conduct of the local government election will be provided equally to all candidates. The types of assistance that are available will be documented and communicated to candidates in advance. Types of assistance may include advice on manipulation of electoral roll data and interpretation of legislative requirements, amongst other matters.

Candidates may obtain advice or assistance from the Western Australian Electoral Commission (WAEC) as they are responsible for managing the Shire of Wyndham East Kimberley's elections.

### **9.3 Information Request Register**

An Information Request Register will be maintained by the Chief Executive Officer during the Caretaker Period. This Register will be a public document that records all requests for information made by Elected Members and candidates, and the response given to those requests, during the Caretaker Period. Staff will be required to provide details of requests to the Chief Executive Officer for inclusion in the Register.



#### **9.4 Media Advice**

Any requests for media advice or assistance from Elected 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 Elected Members. If satisfied that advice sought by an Elected Member during the Caretaker Period does not relate to the election or publicity involving any specific Elected Member(s), the Chief Executive Officer may authorise the provision of a response to such a request.

#### **9.5 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 Shire activity, it must be approved by the Chief Executive Officer. In any event, the Shire's publicity during the Caretaker Period will be restricted to communicating normal Shire activities and initiatives.

#### **9.6 Media Attention**

Elected Members will not use their position as an elected representative or their access to Shire staff or resources to gain media attention in support of their or any other candidate's election campaign.

#### **9.7 Shire of Wyndham East Kimberley Employees**

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

#### **9.8 Election Process Enquiries**

All election process enquiries from candidates, whether current Elected 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 Western Australian Electoral Commission.

#### **RISK:**

**Risk:** Failure to comply with legislative requirements leading to damage of reputation and/or financial loss.

**Control:** Review policies and procedures in accordance with review schedule.