

EXE 027: ELECTORAL CARETAKER PERIOD

Document Status:	Current	CM Ref:	D20/31149[v2]
Document Controller:	Chief Executive Officer	Version No:	2
Date Adopted:	October 2020	Resolution #:	O1020-317
Date Reviewed:	January 2022	Resolution #:	O0122-012

Objective

This Policy establishes protocols for the purpose of preventing 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 administration on behalf of the Shire of Esperance during the period immediately prior to an election.

Policy

This policy applies to Council Members and Employees, and specifically applies during a 'Caretaker Period' to:

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

Definitions

'Caretaker Period' means the period of time prior to an Election Day, specifically being the period from the close of nominations (37 days prior to the Election Day in accordance with s.4.49 (a) of the Local Government Act 1995) until 6.00pm on Election Day.

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

'Election Day' means the day fixed under the *Local Government Act 1995* for the holding of any poll needed for an election. For the purposes of this Policy, 'Election Day' meaning excludes an Extraordinary Election Day unless otherwise specified in this Policy.

'Electoral Material' means 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 (s.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 Shire of Esperance 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 for the purpose of discussion, review, acknowledgement, communication, consultation, celebration or promotion, of any matter relevant to the Shire of Esperance 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 of Esperance or an external entity.

‘Extraordinary Circumstances’ means a circumstance that requires the Council to make or announce a Major Policy 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 of Esperance

‘Major Policy Decision’ means any decision:

- (a) Relating to the employment, remuneration or termination of the CEO, 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 of Esperance entering into a sponsorship arrangement with a total Shire of Esperance 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 of Esperance entering into a commercial enterprise as defined by Section 3.59 of the *Local Government Act 1995*;
- (d) That would commit the Shire of Esperance 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 policy, service or service level or significantly amends an existing policy, service or service level, 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.

- (i) Major Policy Decision does NOT include any decision necessary in response to an Emergency, either declared by the State or Federal Government or by the Shire of Esperance 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’ means 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 the Shire of Esperance’s tender threshold.

Caretaker Period Protocols - Decision Making

The CEO will ensure that:

- (a) Council Members and employees are advised in writing of the impending Caretaker Period and Policy requirements at least 30-days prior to the commencement of a Caretaker Period.
- (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.

Scheduling Major Policy Decisions

1. During a Caretaker Period, unless Extraordinary Circumstances apply, the CEO will reasonably ensure that:
 - (a) Council or Committee Agenda, do not include reports and / or recommendations that constitute Major Policy Decisions; and
 - (b) Council Forums, Workshops or Briefings, do not list for discussions matters that relate to Major Policy Decisions.
2. The CEO shall reasonably ensure that, unless Extraordinary Circumstances apply, Major Policy Decisions are either:
 - (a) Considered by the Council prior to the Caretaker Period; or
 - (b) Scheduled for determination by the incoming Council.
3. 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 Major Policy Decision or an election campaign issue.

Council Reports Electoral Caretaker Period Policy Statement

Each report included in an Agenda for Council’s consideration during a Caretaker Period, will include a statement that demonstrates due consideration of the requirements of this Policy.

If the matter is not a Major Policy Decision, the following statement must appear in the Report:

Electoral Caretaker Period Policy Statement

The Officer Recommendation has been reviewed in context of the Shire of Esperance's Electoral Caretaker Period Policy and the CEO has determined that it does not constitute a Major Policy Decision. The CEO therefore provides this report for Council's consideration.

Council Reports

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

- (a) Details, if applicable, of:
 - (i) 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) How potential electoral impacts will be managed or mitigated.
- (b) An Electoral Caretaker Period Policy Statement, which details why Extraordinary Circumstances apply.
- (c) An Officer Recommendation for Council to accept that Exceptional Circumstances apply and receive the report for consideration. This Recommendation is to be considered and resolved by Council, prior to debate of the substantive recommendation relating to the Major Policy Decision

Electoral Caretaker Period Policy Statement

The Officer Recommendation has been determined as a Major Policy Decision within the context of the Shire of Esperance's Electoral Caretaker Period Policy for the following reasons:

[list reasons here]

In accordance with the Shire of Esperance's Electoral Caretaker Period Policy, the CEO seeks a Council Resolution to enable Council's consideration of the matter due to the following Exceptional Circumstances:

[list reasons here]

Officer Recommendation

That Council, in accordance with the Electoral Caretaker Period Policy, determines in regard to the Report titled "*insert report title*" to:

1. Accept that Exceptional Circumstances exist: and therefore
2. Receives the Report for Council's consideration.

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 Major Policy Decision for Council Member discussion at Council Forums, Workshops or Briefings.

The CEO is required to provide Council with advice as to why Exceptional Circumstance apply and how potential electoral impacts will be managed or mitigated. Details of this advice is to be retained, with the Forum, Workshop or Briefing notes, as a Local Government record.

Managing CEO Employment

This Policy, prohibits Major Policy 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.

Delegated Authority Decision Making in Extraordinary Circumstances

During a Caretaker Period, Employees who have Delegated Authority shall not exercise that delegated authority where the matter relates to a Major Policy Decision or an election campaign issue. All such decisions under delegated authority must be referred to the CEO for review in consideration of point 3 of the *Scheduling Significant Local Government Decisions* section above.

Caretaker Period Protocols - Candidates

Candidates, including Council Members who have nominated for re-election, shall be provided with equitable access to the Shire of Esperance's public information.

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.

Council Members nominating for re-election, may access information and assistance regarding the Shire of Esperance'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 of Esperance.

All election process enquiries from Candidates, including 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

Where a Candidate, including Council Members who have nominated for re-election, requires the assistance of the Administration to respond to a request made by an Elector, Resident or Ratepayer, then the Administration will provide the response directly to the requesting Elector, Resident or Ratepayer and will also advise the candidate of the outcome.

Candidate Campaign Electoral Materials

Candidates, including Council Members who have nominated for re-election, are prohibited from using the Shire of Esperance's official crest or logo in any campaign Electoral Materials.

Candidate attendance at Meetings

To ensure equitable access to information about Council's decision making during a Caretaker Period, the CEO shall ensure that Candidates, 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.

Council Member Caretaker Period Protocols

Access to Information and Advice

All Council Members will scrupulously avoid using or accessing Shire of Esperance 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.

All Council Member requests for information and advice from the Shire of Esperance will be reviewed by the CEO and where the subject of the information or advice is considered as being related to an election campaign issue, the CEO will have absolute discretion to determine if the information or advice is/is not provided, including where information is provided to one candidate, if that information is also to be provided to all candidates (i.e. including candidates who are not current Council Members).

Media and Publicity

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

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 Shire of Esperance's objectives or operations and is 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, Shire of Esperance Printed Materials

Council Members must ensure that Shire of Esperance business cards and printed materials are only used for purposes associated with their role of a Councillor, in accordance with section 2.10 of the *Local Government Act 1995*.

Council Members are prohibited from using Shire of Esperance 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.

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.

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 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 / 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 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 Shire of Esperance, unless expressly authorised by the CEO.

In any case, the Shire President, Deputy President 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 Council Member who uses Shire of Esperance 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 of Esperance provided equipment, stationery, hospitality, images, communications, services, reimbursements and allowances provided by the Shire of Esperance.

Shire of Esperance 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 of Esperance 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,
- (b) Conducting the Election and promoting Elector participation in the Election

All other, publicity and promotional activities of Shire of Esperance initiatives will be, where reasonably practicable, avoided during the Caretaker Period, including the announcement of Major Policy 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 Major Policy Decision announcement is necessary during a Caretaker Period.

Civic Events and Functions

The Shire of Esperance will avoid the scheduling of Civic Events and Functions during a Caretaker Period, so as to avoid any actual or perceived electoral advantage that may be provided to Council Members who have nominated for re-election.

Where the Shire of Esperance is required to schedule a Civic Event or Function during a Caretaker Period, all Candidates will be invited to attend and will be provided with the similar prominence and protocol courtesies as provided to Council Members. For example; Candidates will be introduced at the function immediately following the introduction of Council Members.

Shire of Esperance Publications and Communications

All Shire of Esperance publications and communications distributed during a Caretaker Period must not 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 Major Policy Decision or which is an electoral campaign issue.

All Shire of Esperance 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.

Shire of Esperance Website and Social Media Content

1. During the Caretaker Period, the Shire of Esperance’s website and social media will not contain any material which does not accord with the requirements of this Policy. For example, Council Member profiles will be removed from the website during a Caretaker Period.

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 of Esperance Delegates on external committees and organisations.

2. Historical website and social media content, published prior to a Caretaker Period, and which does not comply with this policy will not be removed.
3. New website or social media content which relates to Major Policy 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 of Esperance’s social media channels, which is perceived as candidate election campaign material or promotes a candidate or candidates will be removed.

Community Consultation

Unless consultation is mandated under a written law or Exceptional Circumstances apply, community consultation relevant to Major Policy Decisions or potentially contentious election campaign issues, will not be initiated so that the consultation period is conducted immediately prior to, throughout or concluding during, a Caretaker Period.

..... Policy Ends