

Policy Type

Council

Policy Purpose

The policy supplements the caretaker provisions of the *Local Government Act 1995* to provide additional guidance in the lead up to Election Day, ensuring that major decisions which would bind an incoming Council are avoided where possible, preventing the use of public resources in ways that can be seen to be advantageous to, or promoting candidates and also ensuring staff act impartially in relation to candidates.

This Policy has implications for major decision making, public consultation, publications, publishing of information, the use of City of Cockburn resources and access to information and advice.

Policy Statement

1. Legislation

- 1.1. This policy applies in addition to, and does not derogate from, the requirements of the *Local Government 1995* (the Act), and the *Local Government (Functions and General) Regulations 1996* (the Regulations).
- 1.2. In the event of any inconsistency the legislative provisions prevail.
- 1.3. This policy is to be read in conjunction with all other relevant legislation, local laws, delegations, policies, procedures, and processes of the City, providing guidance to ensure the continuation of ordinary business.

2. Scope

- 2.1. This Policy applies to Elected Members and employees of the City of Cockburn during the Caretaker Period and covers:
 - 2.1.1. Notices of Motions and Matters for Investigation submitted by Elected Members
 - 2.1.2. Decisions that are made by the Council;
 - 2.1.3. Information and material published by the City;
 - 2.1.4. Attendance and participation at functions and events;
 - 2.1.5. Use of the City's resources;
 - 2.1.6. Access to information held by the City;
 - 2.1.7. Staff engagement with candidates and/or Elected Members.

2.2. This policy only applies to decisions made during the Caretaker Period and not announcement of decisions made prior to Caretaker Period. However, as far as practicable any such announcements should be made before Caretaker Period begins.

3. Caretaker Period

- 3.1. The Caretaker Period is defined in Section 1.4A of the Act
- 3.2. Unless otherwise specified in the Act, the Caretaker Period for Local Government Elections begins at the close of nominations (as defined in section 4.49(a) of the Act), being 4pm on the day 37 days prior to the Ordinary Election Day, and ends on the day after the returning officer declares the election results.

4. Preparation for Caretaker Period

- 4.1. The Chief Executive Officer (CEO) will ensure as far as possible that all Elected Members and employees are aware of this Policy and practices, at least 30 (thirty) days prior to the start of the Caretaker Period.

5. Significant Acts

- 5.1. Significant Acts are dealt by the Act and Regulations
- 5.2. In accordance with Section 3.73(2) of the Act, a local government must not do a significant act during a caretaker period.
- 5.3. This prohibition is subject only to the exceptions prescribed in the Act and Regulations, and this is not subject to Prevailing Circumstances or other exceptions in this Policy.

6. Public Consultation

- 6.1. It is prohibited under this Policy, for Public Consultation on a contentious issue to be commenced during the Caretaker Period.
- 6.2. Despite subclause 1. above, Public Consultation may be commenced during the Caretaker Period if:
 - 6.2.1. the process has substantially commenced and/or approvals are in place, or
 - 6.2.2. the consultation is a mandatory statutory process or required under existing policy.

7. Major Policy Decisions

- 7.1. As far as reasonably practicable, the Chief Executive Officer should avoid scheduling Major Policy Decisions for consideration at Council Meetings during a Caretaker Period.

7.2. Such decisions should be either:

7.2.1. Considered by the Council prior to the local government Caretaker Period; or

7.2.2. Scheduled for determination by the incoming Council.

7.3. Major Policy Decisions may be considered by Council, if the CEO is satisfied that Prevailing Circumstances apply.

8. Council Forums, Workshops or Briefings relating to Major Policy Decisions

8.1. As far as reasonably practicable, the Chief Executive Officer should avoid scheduling matters related to Major Policy Decisions for discussions at Council Forums, Workshops or Briefings during a Caretaker Period.

8.2. Matters related to Major Policy Decisions may be scheduled for discussions at Council Forums, Workshops or Briefings during a Caretaker Period if the CEO is satisfied that Prevailing Circumstances apply.

9. Prevailing Circumstances

9.1. When determining whether Prevailing Circumstances apply, the CEO is to have regard to a number of circumstances including, but not limited to:

9.1.1. whether the decision is significant

9.1.2. the urgency of the issue

9.1.3. whether the process has substantially commenced and/or approvals are in place

9.1.4. the possibility of legal and/or financial repercussions if it is deferred

9.1.5. unless the consultation is a mandatory statutory process or required under existing policy

9.1.6. whether the decision is likely to be controversial or contentious; and the best interests of the City of Cockburn.

9.1.7. If the CEO is satisfied that Prevailing Circumstances apply,

9.2. the CEO is required to provide Elected Members with advice setting out:

9.2.1. the reasons why Prevailing Circumstances apply; and

9.2.2. how potential electoral impacts will be managed or mitigated.

9.3. Details of advice provided under this clause are to be retained, with the Forum, Workshop or Briefing notes, as a Local Government record.



10. Elected Member Interactions

10.1. During the caretaker period, Elected Members should take particular care when:

- 10.1.1. Considering planning matters before the Council in its role as a responsible authority under the *Planning and Development Act 2005*. It should be noted that items considered by the Joint Development Assessment Panel are done so under an independent process and this policy does not apply;
- 10.1.2. Undertaking a consultation or advocacy role on behalf of members of the community; and
- 10.1.3. Representing the City's communications with State or Federal Government entities

11. Publishing Electoral Material

- 11.1. The City will not print, publish, or distribute, or authorise others to print, publish or distribute on behalf of the City anything that contains 'electoral material' during the Caretaker Period, other than announcing the election, encouraging residents to ensure they are enrolled on the Electoral Roll and encouraging them to vote.
- 11.2. In accordance with Section 4.52 of the Act, the City will publish the required information about all candidates on its website.
- 11.3. Other than information published in accordance with the Act, during the Caretaker Period no additions or changes will be made to information on the City's website about current Elected Members who are standing for re-election.

12. Candidate and/or Elected Member Publications

- 12.1. Candidates and/or Elected Members who publish Electoral Material cannot claim or represent that the Electoral Material originates from or is authorised by the City.
- 12.2. The City of Cockburn logo or crest or anything resembling them, must not be used in Electoral Material.

13. City of Cockburn Publications

- 13.1. There will be no interviews with Councillors or images of any Councillors in the City's printed material during the Caretaker Period. This clause does not apply to information published prior to the Caretaker Period.



14. Media

- 14.1. Elected Members will not use their position as an elected representative or their access to City staff or resources to gain media attention in support of their or any candidate's election campaign.
- 14.2. During the Caretaker Period there will be no proactive publicity shots used by the City in any form involving any Elected Member, except the Mayor.
- 14.3. The Mayor will still be quoted in media responses during the Caretaker Period when providing information as spokesperson on behalf of the City.
- 14.4. Proactive statements in the media realm will be monitored under the Direction of the CEO during the Caretaker Period to ensure compliance with these provisions.
- 14.5. Proactive media during the Caretaker Period will be restricted to operational matters or issues already resolved by Council.
- 14.6. Candidates may not use the City's social media accounts to profile themselves, their campaign or provide any responses or comments to questions or statements on the City's social media pages.

15. Attendance and Participation at Events/Functions

15.1. Public Events Hosted by External Bodies

- 15.1.1. Elected Members may continue to attend events and functions hosted by external bodies during the Caretaker Period and may appear on externally managed social media pages.

15.2. City of Cockburn organised Civic Events/Functions/Official Openings

- 15.2.1. Events and/or functions organised by the City and held during the Caretaker Period will be limited to only those that the Chief Executive Officer, in conjunction with the Mayor, considers essential to the operation of the City.
- 15.2.2. Elected Members nominating as a candidate for local, state or federal government elections should not, where practicable, have any formal role at events/functions organised or sponsored by the City during the Caretaker Period, other than the provision of a short welcome, when appropriate. Any determination of whether it is otherwise appropriate for a Councillor to officiate at a City arranged event / function will be at the discretion of the CEO, in conjunction with the Mayor.
- 15.2.3. Elected Members must not distribute any Electoral Material or promote their campaign at any City of Cockburn organised



Civic Events, Functions, Official Openings, or similar

15.3. Delegates to Community and Advisory Groups

- 15.3.1. Elected Members appointed to community groups and other external organisations as representatives of the City shall not use their attendance at meetings of these groups for Electoral Purposes, to recruit assistance with electoral campaigning or promote their personal or other candidate's electoral campaigns

16. Use of City of Cockburn Resources

- 16.1. The Council's adopted Code of Conduct for Council Members, Committee Members and Candidates prohibits the use of the City's resources for Electoral Purposes.
- 16.2. The City's employees must not be asked to undertake any tasks connected directly or indirectly with an election campaign.
- 16.3. 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 through the Chief Executive Officer.
- 16.4. Community groups who wish to hire City owned premises to interview or record (audio visual) election candidates in a public forum may do so, subject to the relevant venue hire charge being paid in accordance with the City's normal practices.

17. Use of City Information

- 17.1. 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.
- 17.2. Information received or accessed in the role of an Elected Member is not to be used for Electoral Purposes. This includes claiming personal credit for previous Council decisions in marketing material.

18. Media Advice

- 18.1. Any requests for media advice or assistance from Elected Members during the Caretaker Period will be referred to the CEO.
- 18.2. No media advice will be provided in relation to election issues or in regard to publicity that involves specific Elected Members participating in the relevant election.
- 18.3. 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, the CEO may authorise the provision of a response to such a request.

- 18.4. The City will continue to arrange media opportunities for the Mayor when required to fulfil the function of speaking on behalf of the City in accordance with Section 2.8(1)(d) of the Act. These media opportunities must not be used for Electoral Purposes.
- 18.5. The City will not arrange Any media opportunities for Councillors during the Caretaker Period.

19. City of Cockburn Employees

- 19.1. During the Caretaker Period no City employee may make any public statement that relates to an election issue.
- 19.2. Employees must avoid assisting Elected Members in ways that could create a perception of being used for Electoral Purposes.
- 19.3. Employees must not accept employment (voluntary or paid) related to local elections for any candidate.
- 19.4. Employees must not interact with Elected Members or candidates on their social media pages during the Caretaker Period.

20. Local Government Election Process Enquiries

- 20.1 All election process enquiries from candidates, whether current Elected Members or not, will initially be directed to the Returning Officer, or, where the matter is outside the responsibility of the Returning Officer, to the CEO or delegate.

21. Electoral Signs

- 21.1. Electoral signage is not permitted within road reserves (this includes Council verges outside private properties). This is based on a requirement for:
- 21.1.1. Pedestrian safety;
 - 21.1.2. Risk aversion and exposed liability to the City for injuries or damage;
 - and
 - 21.1.3. Vehicle safety for manoeuvrability and sightlines.
- 21.2. Electoral signage is not permitted on City Reserves or City Infrastructure.
- 21.3. The installation of signage on private property requires permission from the owner.

22. Implementation of Caretaker principles during State and Federal Government Elections

- 22.1. Elected Members who nominate, or are pre-selected by a political party to contest a state or federal election, should avoid any appearance that their position on Council is being used as a platform for their state or federal election campaign during the election period.



22.2. An Elected Member may choose to take leave of absence from the Council for such period as they see fit and should, as soon as practicable after nominating or being pre-selected, notify the CEO in writing, who in turn will advise the other Elected Members

22.3. For state or federal elections, the Caretaker Period commences from the date of the election writ issued by the Governor or Governor General, as is relevant.

23. Definitions

Caretaker Period is defined in section 1.4A of the *Local Government Act 1995*.

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 advertisement, handbill, pamphlet, notice, letter or article that is intended or calculated to affect the result of an election, but does not include:

1. 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 purpose of conducting an election.

Electoral Purpose means the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the *Local Government Act 1995*, the *Electoral Act 1907* or the *Commonwealth Electoral Act 1918*.

Events and Functions means gatherings of internal or external stakeholders conducted by the City 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 dinner and receptions.

Major Policy Decision excludes anything that constitutes a Significant Act, means any:

1. Decisions relating to the remuneration of the CEO or any other designated senior officer;
2. Decisions relating to the City entering into a sponsorship arrangement with City of Cockburn residents or community organisations;
3. Irrevocable decisions that commit the City to substantial expenditure or significant unforeseen action;
4. Irrevocable decisions that will have unforeseen significant impact on the City of Cockburn or the community;
5. Reports requested or initiated by an Elected Member, Candidate or member of the public that, in the CEO's opinion, may be perceived within the general community as an issue that adversely 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.

Prevailing Circumstances is defined in clause 9 of this Policy.

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 is defined in section 3.73(1) of the *Local Government Act 1995*.

24. References

- *Local Government Act 1995*
- *Local Government Act (Functions and General) Regulations 1996*
- City of Cockburn Code of Conduct for Council Members, Committee Members and Candidates
- *Electoral Act 1907*
- *Commonwealth Electoral Act 1918*

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