

1.24 Election Caretaker Period Policy

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Responsible Officer	Manager Governance & Risk
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Objective

This Policy establishes protocols for the purpose of preventing actual and perceived advantage or disadvantage to a candidate in a Local Government Election, using public resources or decisions made by the Council or administration on behalf of the City of Albany (the City) during the period immediately prior to an election.

Scope

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

- Decisions made by Council;
- Decisions made under delegated authority;
- Decisions made administratively;
- Promotional materials published by the City;
- Discretionary community consultation;
- Events and functions held by the City or other organisations;
- Use of City of Albany resources; and
- Access to information held by the City.

Policy Statements

PART 1: Caretaker Period Protocols-Decision Making

The CEO will ensure that:

- Elected 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.
- 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.

1.1 Scheduling Major Policy Decisions

- During a Caretaker Period, unless Extraordinary Circumstances apply, the CEO will reasonably ensure that:
- Council or Committee Agendas do not include reports and/or recommendations that constitute major policy decisions; and
- Council Forums, Workshops or Briefings do not list for discussion matters that relate to major policy decisions.

The CEO shall reasonably ensure that, unless Extraordinary Circumstances apply, major policy decisions are either:

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

The CEO shall reasonably ensure that, unless Extraordinary Circumstances apply, Delegated Authority from the Council to the CEO or Committee is not exercised where the exercise of that delegated authority relates to a major policy decision or an election campaign issue.

1.2 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:

1.3 Extraordinary Circumstances

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:

Details, if applicable of:

- 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.
- How potential electoral impacts will be managed or mitigated.

An Electoral Caretaker Period Policy Statement, which details why Extraordinary Circumstances apply.

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 the debate of the substantive motion relating to the major policy decision.

Example Wording:

- **Support: Electoral Caretaker Period Policy Statement:** *The Officer Recommendation has been reviewed in context of the City of Albany's Electoral Caretaker Period Policy, and the CEO has determined that it does not constitute a major policy decision. The CEO therefore recommends this report for Council's consideration.*
- **Not Support: Electoral Caretaker Period Policy Statement:** *The Officer Recommendation has been determined as a major policy decision within the context of the City of Albany's Electoral Caretaker Period Policy for the following reasons:*
 - *List reasons.*
- **Seeks Resolution of Council: Electoral Caretaker Period Policy Statement:** *In accordance with the City of Albany's Electoral Caretaker Period Policy, the CEO seeks a Resolution of Council to enable Council's consideration of the matter due to the following exceptional circumstances:*
 - *List reasons.*
- **AUTHORISING OFFICER RECOMMENDATION**
THAT Council, in accordance with the Electoral Caretaker Period Policy, determines in regard to Report Item XXX to:
(1) ACCEPT that Exceptional Circumstances exist; and therefore;
(2) RECEIVE the Report for consideration.

1.4 Council Forums, Workshops and 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 discussion by elected members at Council Forums, Workshops or Briefings.

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

1.5 Managing CEO Employment

This policy prohibits major policy decisions relating to the employment, remuneration or termination of the CEO during a Caretaker Period.

Council is however, required to fulfil its obligations as the CEO's employer regardless of a Caretaker Period. Therefore, during a Caretaker Period:

The Council may consider and determine:

- CEO's leave applications;
- Appoint an Acting CEO where necessary; or
- Suspend the current CEO, where appropriate and in accordance with the terms of their contract.

The Council may not initiate a CEO recruitment process or initiate or undertake a CEO performance review process during a Caretaker Period.

1.6 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 clause 1.1.3 of this policy.

PART 2: Caretaker Period Protocols-Candidates

Part 2 of this policy, inclusive of its sub-clauses, applies to a Caretaker Period relevant to Election Days and Extraordinary Election Days.

Candidates, including elected members who have nominated for re-election, shall be provided with equitable access to the City of Albany'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.

Elected members nominating for re-election may access information and assistance regarding the City's operations and Council matters during a Caretaker Period, but only to the extent necessary to perform their role as an elected member and limited to matters currently relevant to the City of Albany.

All election process enquiries from Candidates, including elected 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.

2.1 Candidate Requests on behalf of Electors, Residents and Ratepayers

Candidates, including elected members who have nominated for re-election, may advise the City where they have received elector, resident or ratepayer requests for advice, information or responses to matters relevant to the City of Albany.

Responses will not be provided to the candidate on the basis that the provision of responses to enquiries from electors, residents or ratepayers regarding the operations of the Local Government is an administrative function (refer Local Government (Model Code of Conduct) Regulations 2021, Division 4 – Rules of conduct).

Therefore, the candidate's requests made on behalf of an elector, resident or ratepayer will be responded to by the City's administration directly to the requesting elector, resident, or ratepayer.

2.2 Candidate Campaign Electoral Materials

Candidates, including elected members who have nominated for re-election, are prohibited from using the City's official crest or logo in any campaign Electoral Materials.

2.3 Candidate Attendance at Meetings

To ensure equitable access to information about Council's decision-making during a Caretaker Period, the CEO shall ensure that all Candidates who are not sitting elected 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 elected 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.

PART 3: Elected Member Caretaker Period Protocols

Part 3 of this policy, inclusive of its sub-clauses, applies to a Caretaker Period relevant to Election Days and Extraordinary Election Days.

3.1 Access to Information and Advice

All elected members will scrupulously avoid using or accessing City 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 elected member requests for information and advice from the City 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 the information is provided to one candidate, if that information is also to be provided to all candidates (i.e. including candidates who not current elected members).

3.2 Media and Publicity

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

The CEO will only authorise elected member access to media advice or assistance where, in the CEO's opinion, the subject matter is relevant to the City of Albany's objectives or operations and is not related to an elected campaign purpose or issue or the elected member's candidacy or the candidacy of another person.

3.3 Elected Member Business Cards, City of Albany Printed Material

Elected members must ensure that City business cards and printed materials are only used for purposes associated with their role as a Councillor, in accordance with section 3.10 of the Local Government Act 1995.

Elected members are prohibited from using City business cards or printed material 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

3.4 Elected Member Participation in Events and Functions

During a Caretaker Period elected members may continue to fulfil their role through attendance at events and functions hosted by external bodies.

3.5 Elected Member Delegates to External Organisations

At any time, including times outside of a Caretaker Period, elected members who the Council's appointed delegate to an external organisation must not use their attendance at an external organisation's meetings, 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.

3.6 Elected Member Addresses/Speeches

Excluding the Mayor and Deputy Mayor, when fulfilling their functions prescribed in sections 2.8 and 2.9 of the Local Government Act 1995, elected 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 City unless expressly authorised by the CEO.

In any case, the Mayor, Deputy Mayor and elected members are prohibited from using an official speech or address during a Caretaker Period to promote an elected campaign purpose.

3.7 Elected Member Misuse of Local Government Resources

An elected member who uses City resources for the purpose of persuading electors to vote in a particular way is a "misuse of Local Government resources" breach in accordance with the Local Government (Model Code of Conduct) Regulations 2021, Division 4 – Rules of conduct.

This prohibition on misuse of Local Government Resources for electoral purposes always applies and is not only applicable to a Caretaker Period.

For clarity, Local Government Resources includes but is not limited to: employee time and expertise, City of Albany provided equipment, stationery, hospitality, images, communications, services, reimbursements and allowances provided by the City of Albany.

PART 4: City of Albany Publicity, Promotional and Civic Activities

Part 4 of this policy, inclusive of its sub-clauses, applies to a Caretaker Period relevant to Election Days and Extraordinary Election Days.

Publicity campaigns and promotional activities during a Caretaker Period may be undertaken only for the purposes of:

- Promoting City of Albany services and activities, where such promotion does not relate to an electoral campaign issue and would otherwise be undertaken as part of normal operations; and
- Conducting the election and promoting elector participation in the election.

All other publicity and promotional activities of the City initiatives will be, where reasonably practicable, avoided during the Caretaker Period, including the announcement of majority 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.

4.1 Civic Events and Functions

The City will avoid the scheduling of Civic Events and Functions during a Caretaker Period, to avoid any actual or perceived electoral advantage that may be provided to elected members who have nominated for re-election.

Where the City 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 elected members.

For example; candidates will be introduced at the function immediately following the introduction of elected members.

4.2 City of Albany Publications and Communications

All City publications and communications distributed during a Caretaker Period must not include content that:

- May, or be perceived to, persuade voting in an election; or
- Is specific to a candidate or candidates, to the exclusion of other candidates; or
- Draws focus to or promotes a matter which is a major policy decision, or which is an electoral campaign issue.

All City 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.

4.3 City of Albany Website and Social Media Content

During the Caretaker Period the City's website and social media will not contain any material which does not accord with the requirements of this policy.

For example: elected member profiles will be removed from the website during a Caretaker Period.

Website and social media content regarding elected members will be limited to: elected member names, contact details, membership of committees and Council appointments as City delegates on external committees and organisations.

Historical website and social media content, published prior to a Caretaker Period and which does not comply with this policy will not be removed.

New website and social media content which relates to a major policy decisions or election campaign issues will not be published during a Caretaker Period unless Exceptional Circumstances apply.

Content posted by the public, candidates or elected members on the City's social media channels which is perceived as candidate election campaign material or promotes a candidate, or candidates will be removed.

4.4 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.

Legislative and Strategic Context

This policy complies with the requirements of the:

- Local Government Act 1995;
- Local Government (Model Code of Conduct) Regulations 2021; and
- Local Government (Elections) Regulations 1997.

Review Position and Date

This policy must be reviewed every two years after a general Local Government election, or earlier if Council considers it necessary.

Definitions

Key terms and acronyms used in the policy, and their 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 the Election Day.
- **CEO** means the Chief Executive Officer of the City of Albany.
- **Election Day** means the day fixed under the Local Government Act 1995 for the holding of any poll needed for an election, including an extraordinary election to elect a new Mayor. For the purposes of this policy, 'Election Day' meaning generally 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 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 City 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 City 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 City of Albany.

- **Major Policy Decision** means any decision:
 - (a) Relating to the employment, remuneration or termination of the CEO or any other designated Senior Employee [s.5.37], 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 City of Albany entering into a sponsorship arrangement with a total City of Albany 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 City of Albany entering into a commercial enterprise as defined by Section 3.59 of the Local Government Act 1995;
 - (d) That would commit the City of Albany 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 Mayor 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 0.1% of the City’s annual budgeted revenue (inclusive of GST) in the relevant financial year.