



1.1.11 Elections – Caretaker Period

Type:	Office of the CEO – Elected Members
Legislation:	<i>Local Government Act 1995</i> <i>Local Government (Functions and General) Regulations 1996</i> Town of East Fremantle Code of Conduct – Elected Members, Committee Members and Candidates <i>Electoral Act 1907 (WA)</i> <i>Electoral Act 1918 (Commonwealth)</i>
Delegation:	N/A
Other Related Document:	

Purpose

This 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 employees act impartially in relation to candidates.

This policy has implications for major decision making, public consultation, publications, publishing of information, the use of Town of East Fremantle resources and access to information and advice.

This policy is to be applied in conjunction with all other relevant legislation, local laws, delegations, policies, procedures and processes of the Town, providing guidance to ensure the continuation of ordinary business.

Policy Statement

1. Legislation

- 1.1. This policy applies in addition to, and does not derogate from, the requirements of the *Local Government 1995*, and the *Local Government (Functions and General) Regulations 1996*.
- 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 Town, providing guidance to ensure the continuation of ordinary business.

2. Scope

- 2.1. This Policy applies to council members and Town employees during a Caretaker Period and covers:
 - 2.1.1 Notices of Motions submitted by council members;
 - 2.1.2 Decisions made by Council;
 - 2.1.3 Information and material published by the Town;
 - 2.1.4 Attendance at and participation in functions and events;
 - 2.1.5 Use of the Town's resources; Access to information held by the Town; and
 - 2.1.6 Employee engagement with candidates and/or council members.
- 2.2 While candidates who are not sitting council members cannot be compelled to comply with a Council policy, such candidates will be made aware of this policy and encouraged to cooperate with its implementation. In addition, candidates will be informed of the "Code of Conduct for Council Members, Committee Members and Candidates" and that a breach of the requirements of the Code of Conduct could result in a complaint being brought against the candidate should they be elected to Council (per section 5.104(6) of the Act and clause 11 of the Code of Conduct).]
- 2.3. This policy only applies to decisions made during the Caretaker Period and not the announcement of decisions made prior to the Caretaker Period, however, as far as practicable any such announcements should be made before the Caretaker Period begins.

3. Definitions

Act means the *Local Government Act 1995*

Caretaker Period has the meaning defined in section 1.4A(1) of the Act.

1.4A. Caretaker period

(1) In this Act —

caretaker period, in relation to a local government, 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; 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

(2) In subsection (1) —

relevant election means any of the following —

- (a) an ordinary election;
- (b) an inaugural election;
- (c) an election under section 4.11, 4.12, 4.13 or 4.14;
- (d) an election under section 4.15 after an election that is a relevant election under paragraph (a), (b) or (c) or this paragraph is declared invalid.

CEO means the Chief Executive Officer, who is the most senior employee in the organisation. The CEO is appointed by and directly accountable to the Council.

council member means a person elected under the Act as a member of Council. The Town's council members include the Mayor, Deputy Mayor and Councillors (as defined by the Act).

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' generally excludes an Extraordinary Election Day unless otherwise specified in this policy.

- 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 any materials produced by the Town 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.
- 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 for the purpose of discussion, review, acknowledgement, communication, consultation, celebration or promotion of any matter relevant to the Town 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 Town or an external entity.
- 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 Town entering into a sponsorship arrangement with Town residents or community organisations;
 3. Irrevocable decisions that commit the Town to substantial expenditure or significant unforeseen action;
 4. Irrevocable decisions that will have unforeseen significant impact on the Town or the community;
 5. Reports requested or initiated by a council 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.
- public consultation*** means a process which involves an invitation to individuals, groups, organisations or the community generally to comment on an issue, proposed action or proposed policy, but does not include consultation required to be undertaken in order to comply with a written law.
- Prevailing Circumstances*** is defined by clause 8 of this policy.
- significant act*** has the meaning given in section 3.73 (1) of the Act.

Division 5 — Caretaker period

3.73 Restrictions on what local government may do during caretaker period

(1) In this section –

emergency means

- (a) the occurrence, or imminent occurrence, of an event, situation or condition that is a hazard under the definition of that term in the *Emergency Management Act 2005* section 3; or
- (b) a public health emergency as defined in the *Public Health Act 2016* section 4(1)

land transaction has the meaning given in section 3.59(1)

major land transaction has the meaning given in section 3.59(1)

major trading undertaking has the meaning given in section 3.59(1)

significant act 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;
- (g) inviting tenders in prescribed circumstances;
- (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.

(2) During a caretaker period, a local government must not do a significant act.

(3) Subsections (4) to (6) apply despite subsection (2).

- (4) A local government may do a significant act during a caretaker period if —
 - (a) the local government’s decision to do the significant act was made before the caretaker period; and
 - (b) any prescribed requirements are met.
- (5) A local government may do a significant act during a caretaker period if it is necessary for the local government to do the significant act during the caretaker period in order to comply with any of the following —
 - (a) a written law;
 - (b) an order of a court or tribunal;
 - (c) a contractual obligation of the local government under a contract entered into by the local government before the caretaker period.
- (6) The Departmental CEO may authorise a local government to do a significant act during a caretaker period if the Departmental CEO is satisfied that it is necessary for the local government to do the significant act during the caretaker period —
 - (a) because of an emergency; or
 - (b) to ensure the proper operation of the local government.

4. **Caretaker Period**

4.1 The Caretaker Period is defined in the Act.

4.2 The CEO will ensure as far as reasonably practicable that all council members and employees are aware of this policy 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.

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 is not subject to Prevailing Circumstances or other exceptions detailed in this policy.

6. **Public Consultation**

6.1 It is prohibited under this policy for public consultation to be commenced during the Caretaker Period on an issue which is contentious.

6.2 Despite subclause 4.1, public consultation may be commenced during a 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 during a Caretaker Period and instead should ensure that such decisions are either:
 - 7.1.1 Considered by the Council prior to the Caretaker Period; or
 - 7.1.2 Scheduled for determination by the incoming Council.
- 7.2 Major policy decisions may be considered by Council if the CEO is satisfied that Prevailing Circumstances apply.
- 7.3 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.
- 7.4 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.

8. Prevailing Circumstances

- 8.1. When determining whether Prevailing Circumstances apply, the CEO is to have regard to a number of circumstances including, but not limited to:
 - 8.1.1 whether the decision is significant.
 - 8.1.2 the urgency of the issue.
 - 8.1.3 whether the process has substantially commenced and/or approvals are in place.
 - 8.1.4 the possibility of legal and/or financial repercussions if it is deferred.
 - 8.1.5 whether the consultation is a mandatory statutory process or required under existing policy.
 - 8.1.6 whether the decision is likely to be controversial or contentious, and in the best interests of the Town.
- 8.2 If the CEO is satisfied that Prevailing Circumstances apply, the CEO is required to provide council members with advice setting out:
 - 8.2.1 the reasons why Prevailing Circumstances apply; and
 - 8.2.2 how potential electoral impacts will be managed or mitigated.

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

9. **Council Member Interactions**

- 9.1 During the Caretaker Period, council members should take particular care when:
- 9.1.1 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];
 - 9.1.2 undertaking a consultation or advocacy role on behalf of members of the community; and
 - 9.1.3 representing the Town's communications with State or Federal Government entities.

10. **Publishing Electoral Material**

- 10.1 The Town will not print, publish or distribute, or authorise others to print, publish or distribute on behalf of the Town 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.
- 10.2 In accordance with section 5.42 of the Act the Town will publish the required information about all candidates on its website.
- 10.3 Other than information published in accordance with the Act, during the Caretaker Period no additions or changes will be made to information on the Town's website about current council members who are standing for re-election.

11. **Candidate and/or Council Member Publications**

- 11.1 Candidates and/or council members who publish electoral material must not claim or represent that the electoral material originates from or is authorised by the Town.
- 11.2 The Town of East Fremantle logo or crest or anything resembling them must not be used in electoral material.

12. **Town of East Fremantle Publications**

- 12.1 There will be no interviews with council members or images of any council member in the Town's printed material during the Caretaker Period.
- 12.2 This clause does not apply to information published prior to the Caretaker Period.

13. **Media**

- 13.1 Council members will not use their position as an elected representative or their access to Town staff or resources to gain media attention in support of their or any candidate's election campaign.

- 13.2 During the Caretaker Period there will be no proactive publicity shots used by the Town in any form involving any council member, except the Mayor.
- 13.3 The Mayor will still be quoted in media responses during the Caretaker Period when providing information as spokesperson on behalf of the Town.
- 13.4 Proactive statements in the media will be monitored under the direction of the CEO during the Caretaker Period to ensure compliance with these provisions.
- 13.5 Proactive media during the Caretaker Period will be restricted to operational matters or issues already resolved by Council.
- 13.6 Candidates may not use the Town's social media accounts to profile themselves, their campaign or provide any responses or comments to questions or statements on the Town's social media pages.

14. Attendance and Participation at Events/Functions

14.1 Public Events Hosted by External Bodies

- 14.1.1 Council 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.

14.2 Town of East Fremantle organised Civic Events/Functions/Official Openings

- 14.2.1 Events and/or functions organised by the Town and held during the Caretaker Period will be limited to only those that the CEO, in conjunction with the Mayor, considers essential to the operation of the Town.
- 14.2.2 Council 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 Town 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 Town arranged event/function will be at the discretion of the CEO, in conjunction with the Mayor.
- 14.2.3 Council members must not distribute any campaign material or promote their campaign at any Town of East Fremantle organised civic events, functions, official openings, or similar.

14.3. Delegates to Community and Advisory Groups

- 14.3.1 Council members appointed to community groups and other external organisations as representatives of the Town shall not use their attendance at meetings of these groups to either recruit assistance with electoral campaigning or to promote their personal or other candidate's electoral campaigns.

15. Use of Town of East Fremantle Resources

- 15.1 The Town of East Fremantle Code of Conduct – Elected Members, Committee Members and Candidates prohibits the use of the Town's resources for electoral purposes.
- 15.2 The Town's employees must not be asked to undertake any tasks connected directly or indirectly with an election campaign.

- 15.3 In any circumstances where the use of Town resources might be construed as being related to a candidate's election campaign, advice is to be sought through the CEO.
- 15.4 Community groups who wish to hire Town 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 Town's normal practices.

16. Access to Town Held Information

- 16.1 All candidates will have equal rights to access publicly available information from the Town's administration.
- 16.2 Information, briefing material and advice prepared or secured by employees for a council member must be necessary to the carrying out of the council member's role.
- 16.3 Information received or accessed in the role of a council member is not to be used for electoral purposes. This includes claiming personal credit for previous Council decisions in marketing material.

17. Media Advice

- 17.1 Any requests for media advice or assistance from council members during the Caretaker Period will be referred to the CEO.
- 17.2 No media advice will be provided in relation to election issues or in regard to publicity that involves specific council members participating in the relevant election.
- 17.3 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, the CEO may authorise the provision of a response to such a request.
- 17.4 The Town will not arrange any media opportunities for council members during the Caretaker Period.

18. Town of East Fremantle Employees

- 18.1 During the Caretaker Period no Town employee may make any public statement that relates to an election issue.
- 18.2 Employees must avoid assisting council members in ways that could create a perception of being used for electoral purposes.
- 18.3 Employees must not accept employment (voluntary or paid) related to local elections for any candidate.
- 18.4 Employees must not interact with council members or candidates on their social media pages during the Caretaker Period.

19. Local Government Election Process Enquiries

- 19.1 All election process enquiries from candidates, whether current council 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.

20. Electoral Signs

- 20.1 Electoral signage is not permitted within road reserves (this includes Council verges outside private properties). This is based on a requirement for:

- 20.1.1 Pedestrian safety;
- 20.1.2 Risk aversion and exposed liability to the Town for injuries or damage; and
- 20.1.3 Vehicle safety for manoeuvrability and sightlines.
- 20.2 Electoral signage is not permitted on Town Reserves or Town infrastructure.
- 20.3 The installation of signage on private property requires permission from the owner.

21. Implementation of Caretaker Practices during State and Federal Government Elections

- 21.1 Council 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.
- 21.2 A council 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 council members.
- 21.3 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.

Responsible Directorate:	Office of the CEO
Reviewing Officer:	Chief Executive Officer
Decision making Authority:	Council
Policy Adopted:	21/9/21
Policy Amended/Reviewed:	19/8/25