



Shire of **Ngaanyatjaraku**
ON A JOURNEY

Council Policy

Policy 1.16 – Council Election
Caretaker Period

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Council Policy 1.16 – Council Election Caretaker Period

Policy Objective

The primary objective of this Policy is to avoid actions and decisions which could be perceived as intended to affect the result of an election or otherwise to have a significant impact on, or unnecessarily commit, the incoming Council, and ensuring the Shire's administration acts impartially in relation to candidates. Section 3.73 of the Act prohibits Local Governments from doing, or deciding to do, any 'significant acts' during a caretaker period.

Policy Scope

This Policy applies to Elected members, electoral candidates and Shire Council employees during the caretaker period to cover:

- Decisions that are made by the Shire Council;
- Decisions made under delegated authority
- Decisions made administratively

- Materials published by the Shire;
- Attendance and participation in functions and events;
- Discretionary community consultation
- Use of the Shire's resources; and
- Access to information held by the Shire.

Caretaker Period means the period of time for the close of nominations being 37 days prior to the election day in accordance with the Local Government Act 1995, until 6pm on election day.

Part 1 – Introduction

Scheduling Consideration of Significant Local Government 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:

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

Where extraordinary circumstances prevail, the Chief Executive Officer may submit a major policy decision to Council.

Decisions 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 announcements 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

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) ensure as far as possible, that all Councillors and employees are aware of the Caretaker Policy and practices, 30 days prior to the start of the Caretaker Period.
- b) 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) 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 Exception

Extraordinary Circumstances

The Chief Executive Officer may in extraordinary circumstances permit a matter defined as a “significant Local Government decision” to be submitted to the Council during the Caretaker Period.

Appointment or Removal of the Chief Executive Officer

While this Policy establishes that the Chief Executive Officer may not be appointed or dismissed during the 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 and conditions of their contract), pending the election, after which date a permanent decision can be made.

Delegated authority Decision Making in Extraordinary Circumstances

During a Caretaker Period, Employees who have Delegated Authority are required to consider if a proposed delegated authority decision may relate, or be subsider, to a significant Local government Decision or election campaign issue and if so, refer the matter to the CEO for review and consideration in accordance with Part 1 of this policy.

Part 4 – Caretaker Statement

Caretaker Period

The caretaker period commences at the close of nominations for the election and ends once the election results are declared.

Prohibited Decisions

During the caretaker period, Council and the CEO will not”

1. Enter into any major contracts or undertakings exceeding the CEO’s financial delegation
2. Approve major policy decisions unrelated to ordinary business
3. Commit the Shire to significant actions impacting the incoming Council’s term

To assist the Council to comply with its commitment to appropriate decision making during the Caretaker Period a Caretaker Statement will be included in every report submitted to the Council where the Council’s decision would, or could, be a Major Policy Decision and state:

“The decision the Council may make in relation to this item could constitute a “Major Policy Decision” within the context of the Shire of Ngaanyatjarraku Caretaker Policy, however, an exemption should be made because (insert the circumstances for making the exemption).

Part 5 – Shire Publications

Prohibition on Publishing 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.

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.

Candidate and/or Councillor Publications

Candidates and/or Councillors 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, e.g.: Shire of Ngaanyatjarraku Crest, Branding and/or Logo.

Election Announcement

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.

Shire Publications

Any reference to Councillors 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 consumed as "electoral material".

Shire Website

During the Caretaker Period the Shire's website will not contain any material that is precluded by this Policy. Any references to the election will only relate to the election process. Information about Councillors will be restricted to names, contact details, titles, membership of special committee 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.

Shire Business Cards

During the Caretaker Period, Councillors shall ensure that their allocated business cards are used only for purposes associated with the normal role of a Councillor in servicing their electorate. Councillor Business Cards shall not be used in a manner that could be perceived as an electoral purpose. It should be noted that this prohibition on the use of the Shire's resources for electoral purposes is not restricted to the Caretaker Period.

Part 6 – Public Consultation During Caretaker Period

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 relates to a significant Local Government Decision, 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

Public Events Hosted by External Bodies

Councillors may continue to attend events and functions hosted by external bodies during the Caretaker Period in accordance with the Shire's 'Attendance at Events' policy.

Shire of Ngaanyatjaraku Organised Civic Events/Functions

Events and/or functions organised by the Shire and held during the Caretaker Period will be limited to only those that the Chief Executive Officer considers essential to the operation of the Shire, and should not in any way be associated with any issues that in the Chief Executive Officer's opinion, are considered relevant to, or likely to influence the outcome of an election.

During the Caretaker Period, Councillors dinners and lunches should not be scheduled for any sitting Councillor who is re-nominating and/or a Councillor host any events, presentations or appear in any Council promotional material during the Caretaker Period.

In addition, sitting Councillors' photos and email addresses are not to be used during campaign periods.

Addresses by Councillors

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

Delegates to Community and Advisory Groups

Councillors 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 candidate's electoral campaigns.

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 before asking questions or making a statement at council or Committee meetings during the Caretaker Period.

Part 8 – Use of Shire Resources

Councils' Code of Conduct and 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 employees must not be asked to undertake any tasks connected directly or indirectly with an election campaign and should avoid assisting Councillors 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

Councillor Access to Information

During the Caretaker Period, Councillors are able to access Council information relevant to the performance of their functions as a Councillor in accordance with the ‘Communications – Elected Members and Staff’ policy.

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.

Electoral Information and Assistance

All candidates will have equal rights to access public information, such as the electoral rolls (draft or past rolls) and information relevant to their election campaigns from the Shire administration. Information, briefing material and advice prepared or secured by staff for a Councillor must be necessary to the carrying out of the Councillor’s role and must not be related to election issues that might be perceived to be 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 date 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 elections.

Information Request Register

An Information Request Register will be maintained by the Chief Executive Officer during the Caretaker Period. The Register will be a public document that records all requests for information made by Councillors 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.

Media Advice

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

Publication Campaigns

During the Caretaker Period, publication campaigns, other than for the purpose of conducting (and promoting) the election will be avoided wherever possible. Where a publication 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.

Media Attention

Councillors 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.

Shire of Ngaanyatjarraku 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.

Election Process Enquiries

All election process enquiries from candidates, whether current Councillors or not, will be directed to the Returning Officer or, where the matter is outside of the responsibilities of the Returning Officer, to the Chief Executive Officer.

Breaches of Policy

Any breach of this policy may result in disciplinary action in accordance with relevant legislation and Shire protocols.

Definitions

"Caretaker Period" means the period of time when 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 election.

"Electoral Material" means any advertisement, handbill, pamphlet, notice, letter, article or online social networks that is intended or calculated to aid candidate in 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 its 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 in the event;

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

Major Policy Decision” means any:

- a) Decisions relating to the improvement, termination or remuneration of the Chief Executive Office or any other designated senior employee, other than a decision to appoint an Acting Chief Executive Officer, or suspend the current Chief Executive Officer (in accordance with the terms and conditions of their contract), pending the election.
- b) Decisions relating to the Shire entering into a sponsorship arrangement with a total Shire contribution that would constitute substantial expenditure unless that sponsorship arrangement has previously been granted “in principle” support by the Council and sufficient funds have been included in the Council’s annual budget to support the project.
- 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 a Councillor.
- d) Irrevocable decisions that will have a significant impact on the Shire of Ngaanyatjarraku or the community.
- e) Reports requested or initiated by a Councillor, candidate or member of the public that, in the opinion of the Chief Executive Officer could, be perceived within the general community as an electoral issue and has the potential to call into question whether decisions are soundly based and in the best interests of the community.

“Significant Local Government decision” includes:

- Making a local law (including an amendment or repeal local law)
- Entering into a major land transaction, or a land transaction that is preparatory to entry into a major land transaction
- Commencing a major trading undertaking
- Entering into a contract, or other agreement or arrangement, with consideration over \$250,000 or acquiring or disposing of property valued over \$250,000
- Calling for tenders, or tender exempt procurement (including through the PSP), with an expected consideration above \$250,000
- Establishing, amending the establishment agreement of, winding up or withdrawing from, a regional local government
- Forming, amending the charter of, winding up, or withdrawing from, a regional subsidiary
- Making prescribed decisions under the Planning and Development Act 2005 and Planning and Development (Local Planning Scheme) Regulations 2015
- Publicly inviting persons to apply to join a panel of pre-qualified suppliers
- Deciding to do any of the above

“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 1% of the Shire’s annual budgeted expenditure (exclusive GST) in the relevant financial year.

Policy History

Amendments to this Policy

Amendments to this policy require a simple majority decision of Council. History

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Previous Policy

Policy 1.16