

Town of Mosman Park Caretaker Policy

August 2021

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1 Policy objective

This Policy establishes protocols for the purpose of avoiding 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 Town during the period immediately prior to an election.

2 Policy scope

This policy applies to councillors and employees during a Caretaker Period relevant to:

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

3 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.

'Caretaker Protocol' means the practices or procedures prescribed in this Policy.

'CEO' means the Chief Executive Officer of the Town of Mosman Park.

'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' includes 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 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.

'Events and Functions' including 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.

‘Extraordinary Circumstances’ including a circumstance that requires the Council to make or announce a Significant Local Government Decision during the Caretaker Period because 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 Town.

‘Public Consultation’ includes 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 reporting material variance threshold for the 2021/22 budget of 10% and \$20,000 at the general ledger account level.

‘Significant Local Government Decision’ is a significant or major policy decision which will affect the Council or community or will bind the incoming Council.

A “significant” decision includes decisions:

- (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 Town entering into a sponsorship arrangement with a total Town 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 Town entering into a commercial enterprise as defined by s.3.59 of the *Local Government Act 1995*;
- (d) That would commit the Town 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 councillor, 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 councillor, 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, or significantly changes an existing, policy, service or service level that incurs Significant Expenditure, 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) Significant Local Government 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*.

A 'major policy' decision includes any decision:

- (a) to spend unbudgeted monies;
- (b) to conduct unplanned public consultation;
- (c) to endorse a new policy;
- (d) to dispose of Council land;
- (e) to approve community grants;
- (f) to progress any matter which has been identified as an election issue; and
- (g) any other issue that is considered a major policy decision by the Chief Executive Officer.

'Town' means the Town of Mosman Park

4 Caretaker Period Protocols - decision making

The CEO will ensure that:

- (a) At least 30-days prior to a Caretaker Period, the CEO will advise councillors and employees in writing of the dates that the Caretaker Period commences and concludes.
- (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.

4.1 Scheduling Significant Local Government Decisions

1. The determination as to whether or not any decision is a Significant Local Government Decision will be made by the Chief Executive Officer.
2. During a Caretaker Period, unless Extraordinary Circumstances apply, the CEO will reasonably ensure that:
 - (a) Council or committee agendas, do not include reports and / or recommendations that recommend Significant Local Government Decisions; and
 - (b) Council forums, workshops or briefings, do not list for discussion matters that relate to Significant Local Government Decisions.
3. The CEO shall reasonably ensure that, unless Extraordinary Circumstances apply, Significant Local Government 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 is not exercised where the exercise of that delegated authority relates to a Significant Local Government Decision or an election campaign issue.

4.2 Council reports - Caretaker Period Policy Statements

4.2.1 Policy Statement

During the Caretaker Period, the CEO will ensure that a Caretaker Statement is included in every agenda submitted to Council or a committee. The Caretaker Statement will state:

“The decisions recommended in all reports on this agenda do not fall within the definition of a Significant Local Government Decision as defined in the Town of Mosman Park Caretaker Policy.”

4.2.2 Policy statement - Extraordinary Circumstances

1. Council report

Where, during a Caretaker Period, the CEO determines that Extraordinary Circumstances apply, the CEO may submit a report on a Significant Local Government Decision for Council’s consideration, subject to the report including:

- (a) 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.
- (b) An Electoral Caretaker Period Policy Statement, which details why Extraordinary Circumstances apply.

Where the CEO has determined that a decision is a Significant Local Government Decision but circumstances arise that require the decision to be made during the Caretaker Period, the CEO will report this to the Council.

The aim of the CEO’s report is to assist councillors assess whether the decision should be deferred for consideration by the incoming Council. The CEO’s report to Council will address the following:

- (a) why the matter is considered “significant”;
- (b) why the matter is considered urgent;
- (c) what are the financial and other consequences of postponing the matter until after the election, both on the current Council and the incoming Council;
- (d) whether deciding the matter will significantly limit options for the incoming Council;
- (e) whether the matter requires the expenditure of unbudgeted funds;
- (f) whether the matter is the completion of an activity already commenced and previously endorsed by Council;

- (g) whether the matter requires community engagement;
- (h) any statutory obligations or timeframes; and
- (i) whether dealing with the matter in the Caretaker Period is in the best interests of Council and the community.

Council will consider the CEO's report and determine whether or not to resolve to make the decision.

2. 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 Significant Local Government Decision for Council Member discussion at Council forums, workshops or Briefings.

The CEO is required to provide Council with advice as to why Exceptional Circumstances apply. Details of this advice is to be retained, with the forum, workshop or briefing notes, as a Local Government record.

4.3 Managing CEO employment

This policy prohibits Significant Local Government 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 the CEO's employment 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.

4.4 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 subsidiary, 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 clause 5.1(3) above.

5 Caretaker Period Protocols - candidates

Candidates, including councillors who have nominated for re-election, relevant to an Election Day or Extraordinary Election Day, shall be provided with equitable access to the Town's public information in accordance with s.5.94 of the *Local Government Act 1995*.

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.

Councillors nominating for re-election, may access information and assistance regarding the Town'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 Town[refer s.5.92 of the *Local Government Act 1995*].

All election process enquiries from candidates, including councillors 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.

5.1 Candidate requests on behalf of electors, residents or ratepayers

Where a candidate, including councillors 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.

5.2 Candidate campaign Electoral Materials

Candidates, including councillors who have nominated for re-election, should note that the Town's official crest or logo may not be used in campaign electoral materials without the express permission of the Town.

5.3 Candidate attendance at meetings

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

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.

6 Caretaker Period Protocols- councillors

6.1 Access to information and advice

During a Caretaker Period all councillors will scrupulously avoid using or accessing Town 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 [refer s.5.93 of the *Local Government Act 1995*].

During a Caretaker Period, all councillor's requests for information and advice from the Town will be reviewed by the CEO and where the subject of the information or advice is considered as relating to an election campaign issue, the CEO will either make a determination, or refer the request for Council's determination, as to if the information or advice is / is not to be

provided, including if information is provided to one candidate, or if that information is also to be provided to all candidates (ie, including candidates who are not current councillors).

6.2 Media and publicity

During a Caretaker Period, all councillor requests for media advice or assistance, including councillors who have nominated for re-election, will be referred to the CEO for review.

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

6.3 Councillor's business cards or the Town's printed materials

Councillors must ensure that Town business cards and local government printed materials are only used for purposes associated with their role as a councillor, in accordance with section 2.10 of the *Local Government Act 1995*.

Council Members are prohibited from using Town 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.

6.4 Councillor's participation in Events and Functions

During a Caretaker Period, Councillor's may continue to fulfil their role through attendance at Events and Functions hosted by external bodies.

6.5 Councillor delegates to external organisations

At any time, including times outside a Caretaker Period, councillors 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.

6.6 Councillor's addresses / speeches

Excluding the Mayor and Deputy Mayor, when fulfilling their functions prescribed in ss.2.8 and 2.9 of the *Local Government Act 1995*, councillors 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 Town, unless expressly authorised by the CEO.

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

6.7 Councillor's misuse of local government resources

A councillor who uses Town 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, Town provided equipment, information and communication technologies, stationery, hospitality, images, communications, services, reimbursements and allowances provided by the Town.

7 Town publicity, promotional and civic activities

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

- (a) Promoting Town 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,
- (b) Conducting the election and promoting elector participation in the election.

All other, publicity and promotional activities of Town initiatives will be, where reasonably practicable, avoided during the Caretaker Period, including the announcement of Significant Local Government 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 Significant Local Government Decision announcement is necessary during a Caretaker Period.

7.1 Civic Events and Functions

The Town will avoid the scheduling of civic Events and Functions during a Caretaker Period, which may give rise to any actual or perceived electoral advantage to councillors who have nominated for re-election.

Where the Town is required to schedule a civic event or function during a Caretaker Period at which councillors would usually be invited, then all candidates will also be invited to attend and will be acknowledged as candidates immediately following any acknowledgement provided to councillors, eg, candidates will be introduced at the function immediately following the introduction of councillors.

7.2 Town publications and communications

All Town 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; or
- (c) draws focus to or promotes a matter which is a Significant Local Government Decision or which is an electoral campaign issue.

All Town 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.

7.3 Town website and social media content

1. During the Caretaker Period, this policy applies to content proposed for publication on the Town's website and social media channels.

Website and social media content regarding councillors will be limited to councillor's names, contact details, membership of committees and Council appointments as Town delegates on external committees and organisations. All other biographical information related to a sitting councillor who is also a candidate is to be removed from public access for the duration of the Caretaker Period.

The candidate election profiles prescribed in s.4.49(b) of the *Local Government Act 1995*, may also be published on the Town's website and social media channels.

2. Website and social media content, published prior to a Caretaker Period, will not be subject to this policy.
3. New website or social media content which relates to Significant Local Government 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 councillors via the Town's social media channels, which is perceived as candidate election campaign material or promotes a candidate or candidates will be removed.

7.4 Community consultation

The Town will undertake planned community consultation (discretionary and legislative) during a Caretaker Period, unless the consultation relates to a Significant Local Government Decision or potentially contentious election campaign issue.

Policy Administration

Directorate:		Officer title:
Executive Services		Manager Governance and Risk
Next Review		Review Cycle
2024		Every two years prior to local government elections or sooner as determined by the CEO
Version	Date	Ref
1.	August 2021	OCM-133-2021

