

Pre-election caretaker policy

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Scope

Council is required to go into 'caretaker' mode during the election period. This period commences on the last day on which nominations for the election can be received and ends at 6.00pm on election day.

The caretaker period for the 2016 Council elections commences at midnight on 20 September and concludes at 6.00pm on 22 October.

Background

The Local Government Act 1989 ('the Act') prohibits Councils from making defined major policy decisions, or publishing or distributing electoral matter in an election period.

Council will continue to deliver normal services in the interests of the community during the election period.

Objectives

This policy demonstrates Council's commitment to continuing business as usual throughout the election period as far as possible while ensuring that:

- the incoming Council will not be bound by major policy decisions
- public resources are not used in election campaigning
- the elections are conducted in a manner that is fair and equitable.

Approach

Major policy decisions:

Section 93A of the Act prohibits the making of major policy decisions during the election period that could reasonably be deferred until after the election. Major policy decisions are defined by the Act to be decisions:

- (a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;

- (b) to terminate the appointment of a Chief Executive Officer under section 94;
- (c) to enter into a contract the total value of which exceeds whichever is the greater of—
 - (i) \$100,000 or such higher amount as may be fixed by Order in Council under section 186(1); or
 - (ii) 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year;
- (d) to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100,000 or 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year.

Note: As 1% of Council's revenue from rates and charges for 2015/16 was \$74,770, the threshold of \$100,000 will apply.

Major policy decisions could also include major planning scheme amendments and changes to strategic objectives and strategies in the Council Plan.

If Council considers that there are extraordinary circumstances where the community would be significantly disadvantaged by Council not making a particular major policy decision, Council will resolve to request an exemption from the Minister for Local Government in accordance with section 93A(2) of the Act.

This policy also applies to decisions made under delegation to Council staff and special committees.

Council resources:

It is essential that due propriety is observed in the use of all Council resources. It is also important that all Councillors have access to the resources necessary to fulfill their elected roles.

In order to ensure the proper use of Council resources during the pre-election caretaker period the following will apply:

1. Council resources, including offices, support staff, hospitality, equipment, email, mobile phones and stationery will be used exclusively for normal Council business and will not be used in connection with election campaigning. In any circumstances where the use of Council resources might be construed as being related to a candidate's election campaign, advice will be sought from the Chief Executive Officer.
2. Reimbursement of Councillors' out-of-pocket expenses in the election period will only apply to costs that have been incurred in the performance of normal Council duties and not for expenses that could be perceived as supporting or being connected with a candidate's election campaign.
3. Council logos, letterhead or other brand collateral must not be used for or linked to a candidate's election campaign.
4. Council staff must not be asked to undertake any tasks connected with a candidate's election campaign.

Public Consultation, Events, Functions and Meetings:

Council will avoid holding or sponsoring public consultation, events, functions and meetings during the pre-election caretaker period. The timing of these activities will be scheduled to be held before the election period or after the new Council is elected.

If special circumstances require public consultation to be held, Council will justify to the community why it is necessary and how the risks of affecting voting at the election will be mitigated or prevented.

If special circumstances require an event, function or meeting to be held the reasons must be justified and any risk of affecting voting at the election will need to be mitigated, or prevented, to the satisfaction of the Chief Executive Officer.

Events staged by external bodies

Councillors may continue to attend events and functions during the election period. However, Councillors need to be mindful that they are representing Council and not use the opportunity for electioneering.

Speeches or keynote addresses

Councillors should not give welcome speeches, speeches or keynote addresses at any events, whether organised by Council or by an external body.

Recording of attendance at external meetings and functions

The presence of Councillors at external meetings and functions may be recorded in attendance records, except where this record of attendance is in conjunction with information or promotional material (text or images) that may be considered as electoral material.

Communications:

During the election period, the following will apply:

1. The Chief Executive Officer, or nominated officer, will be the official spokesperson in any Council media release.
2. A Council employee must not make any public statement that could be construed as influencing the election.
3. Council communications will be restricted to promoting normal Council activities and services and for informing residents about the conduct of the election.
4. No media advice or assistance will be provided to Councillors in relation to election campaign matters.
5. Councillors must not use their position as an elected representative to gain media attention specifically in support of their election campaign.

Section 55D of the Act is only concerned with electoral matter that is printed or published and would not, for example, prevent the Mayor from being interviewed and quoted in the media. Nor would it prevent a Councillor or candidate from responding to the matter by issuing their own media release in their own name and using their own resources.

Provision of information to Councillors and candidates:

It is important that sitting Councillors continue to receive information that is necessary to fulfill their elected roles. Council also recognises that all election candidates have certain rights to information from the Council administration, subject to the Privacy and Data Protection Act 2014, which may prevent the disclosure of certain information.

Councillors must not request or receive information or advice from Council to support election campaigns and there must be complete transparency in the provision of all information and advice during the election period.

Section 76B of the Act prescribes serious penalties for any Councillor who inappropriately makes use of their position or information obtained in the role of Councillor to gain advantage.

Publications:

Section 55D of the Act prohibits Council from printing, publishing or distributing publications containing electoral matter during an election period. The Act refers specifically to "an advertisement, handbill, pamphlet or notice"; however, this should be interpreted broadly to refer to documents that are produced for the purpose of communicating with people in the community, including:

- Council newsletters
- Advertisements and notices
- Media releases
- Leaflets and brochures
- Electronic information and web based publications
- Mail outs to multiple addresses

Electoral matter is any matter which is intended or likely to affect voting in an election, but does not include:

1. Any electoral material produced by or on behalf of the Returning Officer for the purposes of conducting an election, or
2. An advertisement in a newspaper announcing the holding of a meeting.

A publication is taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to the election, a candidate in the election or an issue submitted to the voters in connection with the election.

Material is definitely electoral matter if it:

1. Publicises the strengths or weaknesses of a candidate
2. Advocates the policies of the Council or of a candidate
3. Responds to claims made by a candidate
4. Publicises the achievements of the elected Council

Councillors are able to publish campaign material on their own behalf but cannot purport for that material to originate from Council.

Deployment

Council meetings, communications and publications:

All items included for consideration at a Council Meeting held during the election period will be checked by the Chief Executive Officer for electoral matter and for major policy decisions.

All other communications and publications necessary for the delivery of normal Council services will be checked by the Executive Assistant for electoral material prior to final approval and certification as follows by the Chief Executive Officer:

"Certified by the Chief Executive Officer in accordance with section 55D of the Local Government Act 1989".

A copy of the publication and the certification will be retained in Council's records and does not need to be printed on published copies of the document.

Correspondence to individuals, invoices, permits and rates reminder notices generated in the course of normal Council services do not need to be certified.

New material will not be published on Council's website during the election period unless it complies with the above requirements. The Councillor profiles on Council's website will be amended to contain their names and contact details only.

Council is required by the *Act* to submit an Annual Report for 2015/16 by 30 September 2016. The Annual Report will not contain any material that could be regarded as overt electioneering or that inappropriately promotes individual Councillors.

Council resources:

Reimbursements claimed by Councillors during the election period will be reviewed and approved by the Chief Executive Officer. Sitting Councillors who have nominated for re-election will ensure that their Council issued mobile phones, landlines and phone/fax machines, computers, iPads are only used in connection with their duties as a Councillor and not used for campaigning purposes.

Information and advice to Councillors and candidates:

Requests for information and advice from Councillors that relate to their current elected duties must be directed to the Chief Executive Officer or the Director Community and Corporate Services.

Requests for information and advice about Council business and activities from Councillors and candidates must be directed to the Chief Executive Officer. If it is determined that the information requested will be provided, it will be produced in writing and distributed to all candidates.

Requests for information and advice about the election process from Councillors and candidates must be directed to the Returning Officer.

Relevant legislation

Local Government Act 1989

Local Government Amendment (Improved Governance) Act 2015

Local Government (Electoral) Regulations 2005

Subordinate Legislation (Local Government (Electoral) Regulations 2005) Extension Regulations 2015

Results

The effectiveness of this policy will be reviewed prior to the 2020 Council election.