



ELECTION PERIOD POLICY

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INTRODUCTION

Council, Administrators and candidates need to understand the requirements and their obligations in the lead up period to an election. This policy provides that information and demonstrates Council's commitment to probity in its elections thereby boosting community confidence and trust in Council.

CONTEXT

The *Local Government Act 1989* (the Act) provides that during the election period certain prohibitions apply to the general functions and powers of Council.

Section 3(1) of the Act defines the election period to be the 32 day period that starts on the last day of nominations and ends at 6:00 pm on election day.

Section 55D of the Act imposes limitations on Council publications during the election period.

Section 76D of the Act imposes serious penalties for the misuse of the position of Councillor.

Section 93A of the Act defines decisions as major policy decisions that must not be made during an election period.

Section 93B requires Council to prepare, adopt and maintain an election period policy in relation to procedures to be applied by Council during the election period for a general election.

The policy must provide details on procedures that will prevent inappropriate decisions being taken during the election period. Inappropriate decisions are those that would affect voting at an election or decisions that may unreasonably bind an incoming council and could reasonably be deferred until after the election.

The policy must outline procedures Council will undertake to limit public consultation and the scheduling of council events during the election period.

The policy should document how applications for access to council information by all parties will be processed. The policy should make it clear to the community that Administrator

candidates will be treated in the same way as other candidates with respect to access to council held information.

SCOPE

This policy applies to all Administrators, Council employees and agents of Council as well as candidates in the 2016 general election.

Agents of Council extend to include contractors working in-house, staff on exchange, members of Special Committees, members of Advisory Committees, volunteers, work experience students or graduate placements who perform work for Council as well as external suppliers and other contractors and subcontractors.

This policy applies to the election period for the 2016 local government elections which commences at midnight on 20 September 2016 and ends at 6pm on 22 October 2016.

This policy replaces and overrides any previous policy or document that refers to the caretaker period or to the election period.

PURPOSE

The purpose of this policy is to ensure that:

- The ordinary business of local government in the Rural City of Wangaratta continues throughout the election period in a responsible and transparent manner, and in accordance with statutory requirements and established 'caretaker' conventions.
- The general elections for the Wangaratta Rural City Council on Saturday 22 October 2016 and any subsequent elections are conducted in a manner that is ethical, fair and equitable and is publicly perceived as such.

The Policy addresses:

- Commitment (page 4);
- Election Period Notification (page 4);
- Major Policy Decisions Prohibition (page 5);
- Significant Decisions Prohibition (page 5);
- Use of Council Resources (page 5);
- Provision of Information (page 6);
- Public Consultation (page 7);
- Council Communications and Publications (page 7);
- Public Statements (page 8);
- Improper Use of Position (page 8);
- Annual Report (page 9);
- Social Media (page 9);
- Functions and Events (page 9);
- Travel and Accommodation (page 9);
- Administrator Expenditure (page 9);
- Advice to Candidates About the Election Process (page 9); and
- Monitoring and Enforcing the Policy (page 10).

This policy is meant to supplement rather than replace the legislative and commonsense approach to fair and equitable Council elections.

POLICY

DEFINITIONS

Some of the terms used in this policy are defined in the Act and their use in this Policy is consistent with the Act.

Council Branding includes that branding related to the Wangaratta Performing Arts Centre, Wangaratta Art Gallery and the Wangaratta Visitor Information Centre.

Council resources include:

- Staff;
- Property;
- Equipment;
- Stationery; and
- Finances.

Council social media site refers to:

- Council's twitter and face book accounts;
- Visit Wangaratta on Twitter;
- Wangaratta Art Gallery on Facebook;
- Wangaratta Performing Arts Centre on Facebook;
- Wangaratta Visitor Information Centre on Facebook; and
- Wangaratta Youth Council on Facebook.

Council website refers to Council's:

- Corporate website at www.wangaratta.vic.gov.au;
- Corporate mobile website at m.wangaratta.vic.gov.au;
- Wangaratta Community Directory website at community.wangaratta.vic.gov.au/;
- Wangaratta Performing Arts Centre website at www.wangarattapac.com.au/; and
- Wangaratta Visitor Information Centre website at www.visitwangaratta.com.au/.

Electoral advertisement, handbill, pamphlet or notice has the same meaning as section 3(1) of the Act, and means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting.

Electoral matter has the same meaning as electoral matter in section 3(1A) of the Act and means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the returning officer for the purposes of conducting an election.

Section 3(1B) of the Act further qualifies "electoral matter"

“3(1B) Without limiting the generality of the definition of “electoral matter” matter is to be taken or be intended or likely to affect voting in an 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 connection with the election.”

Electoral matter includes material which:

- publicises the strengths or weaknesses of a candidate;
- Advocates the policies of the Council or of a candidate;
- Responds to claims made by a candidate; and
- Publicises the achievements of the Council.

Election period, also known as the caretaker period, means the 32 day statutory time period prior to, and including, the election day.

Public consultation is not defined in the Act, but in this context means a process which involves an invitation or invitations to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy.

Publish has the same meaning in section 3(1) of the Act, and means publish by any means including publication on the internet and includes but is not limited to paper based media including mass mail outs or identical letters send to a large number of people by or on behalf of Council, publications on any Council website, social media site, blog site or any emails with multiple addressees, used for broad communication with the community.

COMMITMENT

This policy commits Council during the election period to:

- Avoid making significant new policies or decisions that could unreasonably bind a future Council; and
- Ensure that public resources, including staff resources, are not used in election campaigning or in a way that may improperly influence the result of an election, or improperly advantage existing Administrators as candidates in the elections.

ELECTION PERIOD NOTIFICATION

In addition to the Chief Executive Officer’s (CEO) statutory responsibilities, the CEO or the CEO delegate will ensure as far as possible, that:

- All Administrators and officers are informed of the application of this policy 30 days prior to the commencement of the election period;
- Matters of Council business requiring major policy or significant decisions are scheduled for Council to enable resolution prior to the commencement of the election period, or deferred where appropriate for determination by the incoming Council; and
- Guidelines to staff on the role and responsibilities of staff in the implementation of this policy are issued if needed.

MAJOR POLICY DECISIONS PROHIBITION

Section 93A of the Local Government Act prohibits Council from making major policy decisions during the election period, including decisions involving:

- The remuneration, appointment or dismissal of the CEO;
- Entering into any major contracts worth more than \$150,000 for goods and services or \$200,000 for works, or 1% of the Council's rates revenue for the previous financial year (whichever is greater); and
- The exercise of any entrepreneurial power under section 193 if the amount assessed under section 193(5A) exceeds \$100,000 or 1% of the Council's rates revenue for the previous financial year (whichever is greater).

In the event of exceptional circumstances requiring a Council decision, an application may be made to the Minister in accordance with Section 93A of the Act.

In order to facilitate compliance with section 93 of the Act relating to major policies and major decisions a statement will be published on the front of each agenda indicating that the agenda has been prepared in accordance with section 93A of the Act.

In circumstances where an exemption has been granted by the Minister a statement indicating that the exemption has been granted will be included in the report.

SIGNIFICANT DECISIONS PROHIBITION

In addition to the decisions specified in section 93A of the Act, Council will avoid making other decisions during the election period that are of a significant nature and which would affect voting at an election, may unreasonably bind an incoming council, and could reasonably be deferred until after the election.

Significant decisions include irrevocable decisions that either commit Council to substantial expenditure or significant actions or that have a significant impact on the municipality or the community. These decisions include:

- Allocating community grants or other direct funding to community organisations;
- Major planning scheme amendments; and
- Changes to strategic objectives and strategies in the council plan.

USE OF COUNCIL RESOURCES

It is essential that due propriety is observed in the use of all Council resources. In order to ensure the proper use of Council resources during the election period, the following will apply:

- Council resources will be used exclusively for normal Council business and will not be used in connection with election campaigning; and
- Council logos, letterhead, or other Wangaratta Rural City Council branding must not be used for, or linked in any way to, a candidate's election campaign.

As Administrators must continue to perform their role during the election period, they will, as a matter of course have access to Council resources including, but not limited to, council vehicles, email services and mobile phones. Such resources must not be used for

electioneering purposes. Usage of these resources may be monitored and their use may be required to be substantiated.

The Customer Request Management System will be responded to in a business as normal manner. Usage of this service may be monitored to ensure compliance with the Act and this Policy.

Council staff will not be asked to undertake any tasks connected with a candidate's election campaign.

PROVISION OF INFORMATION

As Administrators must continue to perform their role during the election period, they will, as a matter of course, receive all necessary information for them to fulfil that role.

Information to be provided to Administrators will include:

- Information that is publicly and freely available such as Council Agendas, Council Plans, Annual Reports, strategies, policies and the like. Such information will not be printed or published for a wider distribution than normal; and
- Information and advice, including briefing papers, provided by Council's management in relation to matters to be decided upon at forthcoming Council and Committee meetings.

All election related enquiries from candidates, or prospective candidates during the election period, will be directed to the Returning Officer, or where the matter is outside the responsibilities of the Returning Officer, to the CEO or CEO delegate.

All requests received by Council staff for information about Council projects, programs or services during the election period will be responded to in a business as normal manner.

- Up to date responses will be provided about progress on Council projects or services to Administrators, candidates or citizens;
- Council staff will provide accurate and complete information. However, a business as normal approach does not include extensive research or analysis involving significant Council resources, or providing a level of information which would not normally be available;
- Council 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. However, it is important that current Administrators continue to receive information that is necessary to fulfil their roles. Administrators shall not request or receive information or advice from Council staff to support election campaigns, and there shall be complete transparency in the provision of all information and advice during the Election Period. Applications for information under the *Freedom Of Information Act 1982* will be dealt with as required by law; and
- Requests for clarification relating to the provision of information should be directed to the CEO.

PUBLIC CONSULTATION

Public consultation may be undertaken during the election period to facilitate the day to day business of Council, to ensure that matters continue to be proactively managed.

Consultations will avoid express or implicit links to the election. In view of the potential for a matter or issue to become contentious or politically sensitive in the course of the election period, Council reserves the right to postpone a matter if the issue is likely to affect voting.

Council will not continue or commence consultation on any contentious or politically sensitive matter after the date on which nominations close.

COUNCIL COMMUNICATIONS AND PUBLICATIONS

Council communications are a legitimate way to promote Council activities and services. It is important that all Administrators have access to Council's communication resources to enable them to fulfil their roles.

Council's communication resources will not be developed or used in support of a candidate's election campaign.

Council publicity and communications will be restricted to promoting normal Council activities and services and for informing residents about the conduct of the election.

Prior to the election period a number of tasks will be undertaken, including:

- Council's website will be reviewed to identify anything that might be construed as electoral matter. Such items will be removed prior to the election period.
- Material to be issued in the election period will be vetted to determine if it requires certification.
- A statement will be posted on all Council social media sites informing the general public that posting a notice during the election period cannot be responded to, or published, should the posting be political in nature. Council's social media sites will be monitored for electioneering material and any inappropriate posts will be removed, as soon as practicable.
- Material published on Council's website in advance of the election period is not subject to certification, however existing material that is prominently displayed will be reviewed and consideration given to the removal of any such material that would be considered electoral matter, were it to be published during the election period,.

During the election period Council will not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the CEO, in accordance with the following provisions:

- The CEO must not certify a publication that contains electoral matter, unless that material is only about the election process;
- This power to approve cannot be delegated to another staff member.
- Any advertisement, handbill, pamphlet or notice proposed for print, publish or distribution during the election period must be vetted by the Manager Communications and Marketing prior to submission to the CEO for certification.

- The certification by the Chief Executive Officer will be in writing on or affixed to a copy of the publication and be in the following form:

'Certified by the Chief Executive officer in accordance with section 55D of the Local Government Act 1989'

- Copies of all certified documents will be retained as Council records;
- Publications which require certification include:
 - Brochures, pamphlets, handbills, flyers, magazines and books;
 - Reports (other than agenda papers and minutes);
 - Advertisements and notices (Rural City Connection) except newspaper notices of meetings;
 - New website material;
 - Social media publications (which includes Facebook, Twitter, Instagram and Pinterest);
 - Emails with multiple addresses, used for broad communication with the community;
 - Mass mail outs or identical letters sent to a large number of people by or on behalf of Council;
 - Media releases;
 - Material to publicise a function or event; and
 - Any publication or distribution of Administrators' speeches.

PUBLIC STATEMENTS

Council staff must not make any public statement that could be construed as influencing the election.

Statements of clarification may be required from time to time and these are to be approved by the CEO.

The CEO will be the spokesperson in situations where an Administrator would normally have fulfilled that role.

No media advice or assistance will be provided to Administrators in relation to election campaign matters.

IMPROPER USE OF POSITION

Administrators will not use their position as an appointed representative, or their access to Council staff and other Council resources, to gain media attention specifically in support of an election campaign. Sections 76D and 76E of the Act prohibit Administrators from misusing or inappropriately making use of their position. A breach of section 76D attracts serious penalties, including possible imprisonment.

Administrator profiles on the Council website will be limited to photograph, portfolio title and contact details. Any other communication from an Administrator via the Council website will be removed.

ANNUAL REPORT

Council is required by the Act to produce and put on public display a copy of its Annual Report. The 2015/16 Annual Report will be published during the election period. The Annual Report will not contain any material that could be regarded as overt electioneering or that inappropriately promotes individual Administrators.

The Annual report does not require certification by the CEO; however any publication of an extract or summary of the Annual Report will require certification.

SOCIAL MEDIA

Any publication on social media sites including Facebook, Twitter, Pinterest and Instagram during the election period must be certified by the CEO. Staff responsible for administering individual social media sites will monitor their respective sites during the election period and use moderation features where available to ensure no electoral matter is posted.

FUNCTIONS AND EVENTS

Any event or function held during the election period shall relate only to legitimate Council business and shall not be used, or be capable of being construed as being used, in connection with any election activity.

All speeches prepared for use at events or functions shall be reviewed by the Chief Executive Officer to ensure the content does not breach this Policy or the Act.

Administrators may make a speech during any event or function. The speech must not have any political reference which may be construed as providing a current Administrator any advantage during the election period.

TRAVEL AND ACCOMMODATION

Administrators, during the election period, shall not participate in any interstate or overseas travel in their capacity as an Administrator. In circumstances where it is imperative that the Chair of Administrators (or nominee) represent Council on a delegation or forum, Council may, by resolution, approve such attendance. If consideration by Council is impractical, the CEO may determine the issue.

ADMINISTRATOR EXPENDITURE

Claims for the reimbursement of expenses shall conform to requirements set out in the Reimbursement of Expenses Councillors and Council Committees Policy 2014.

Reimbursements of Administrators' out-of-pocket expenses during the election period will not apply to costs that could be perceived as supporting or being connected with a candidate's election campaign.

ADVICE TO CANDIDATES ABOUT THE ELECTION PROCESS

All candidates for the Council election will be treated equally. Any advice to be provided to candidates as part of the conduct of the Council election should be provided equally to all candidates.

All election related enquiries from candidates, whether current Administrators 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 (or relevant Director).

MONITORING AND ENFORCING THE POLICY

Where an issue arises in relation to this policy, the CEO is responsible for determining any issues that arise in the implementation of this policy.

Staff and the CEO are subject to penalties as defined by Section 55 of the Act.

REFERENCES

Administrators Code of Conduct 2014

Freedom of Information Act 1982

Local Government Act 1989 (see Appendix 1 for relevant sections of the Act)

Local Government Investigations and Compliance Inspectorate Information Bulletin 4
Election Caretaker Policy August 2012

Local Government Victoria, Governance Practice Note No. 5 - "Election Caretaker Arrangements"

Local Government Victoria, Reforms arising from the Local Government Amendment (Improved Governance) Act 2015

Privacy and Data Protection Act 2014

Victorian Electoral Act 2002

Wangaratta Rural City Council Policy - Reimbursement of Expenses Councillors and Council Committees Policy 2014

REVIEW

This policy is created to provide guidance during the 2016 municipal elections, and will be reviewed for subsequent municipal elections. If required, the policy will be amended not later than 12 months before the commencement of each subsequent general election period.

APPENDIX 1

SECTION 3 DEFINITIONS

election day means (a) in the case of an election, the day of an election determined under section 31 or 38;

election period, in relation to an election, means the period that (a) starts on the last day on which nominations for that election can be received; and (b) ends at 6 p.m. on election day;

electoral advertisement, handbill, pamphlet or notice means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting;

electoral matter means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the returning officer for the purposes of conducting an election. Without limiting the generality of the definition of electoral matter, matter is to be taken to be intended or likely to affect voting in an 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.

publish means publish by any means including by publication on the Internet;

SECTION 55D PROHIBITION ON COUNCIL

(1) A Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer.

(2) The Chief Executive Officer must not intentionally or recklessly certify an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process.

Penalty: 60 penalty units.

(3) Despite section 98(2), the Chief Executive Officer must not delegate the power to certify any advertisement, handbill, pamphlet or notice under this section to a member of Council staff.

(4) A Councillor or member of Council staff must not intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during the election period on behalf of, or in the name of, the Council or on behalf of, or in the name of, a Councillor using Council resources if the electoral advertisement, handbill, pamphlet or notice has not been certified by the Chief Executive Officer under this section.

Penalty: 60 penalty units.

SECTION 76B PRIMARY PRINCIPLE OF COUNCILLOR CONDUCT

It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must—

- (a) act with integrity; and
- (b) impartially exercise his or her responsibilities in the interests of the local community; and
- (c) not improperly seek to confer an advantage or disadvantage on any person.

SECTION 76BA GENERAL COUNCILLOR CONDUCT PRINCIPLES

In addition to acting in accordance with the primary principle of Councillor conduct specified in section 76B, in performing the role of a Councillor, a Councillor must—

- (a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
- (b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- (c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons;
- (d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
- (e) endeavour to ensure that public resources are used prudently and solely in the public interest;
- (f) act lawfully and in accordance with the trust placed in him or her as an elected representative;
- (g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

SECTION 76D MISUSE OF POSITION

(1) A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position—

- (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
- (b) to cause, or attempt to cause, detriment to the Council or another person.

Penalty: 600 penalty units or imprisonment for 5 years or both.

(2) For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee include—

- (a) making improper use of information acquired as a result of the position he or she held or holds; or

(b) disclosing information that is confidential information within the meaning of section 77(2);
or

(c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or

(d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or

(e) using public funds or resources in a manner that is improper or unauthorised; or

(f) failing to disclose a conflict of interest as required under this Division.

(3) This section—

(a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of special committees; and

(b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

SECTION 76E IMPROPER DIRECTION AND IMPROPER INFLUENCE

(1) A Councillor must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Council staff in the exercise of any power or in the performance of any duty or function by the member.

(2) A Councillor must not direct, or seek to direct, a member of Council staff—

(a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or

(b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or

(c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or

(d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.

(3) This section does not apply to a decision of the Council or a special committee that is made within the powers, duties or functions conferred under this or any other Act.

SECTION 93A CONDUCT OF COUNCIL DURING ELECTION PERIOD

(1) Subject to this section, a Council, a special Committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.

(2) If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.

(3) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.

(4) A major policy decision made in contravention of this section is invalid.

(5) Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.

(6) In this section, a "major policy decision" means any decision—

(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.

SECTION 93B COUNCIL TO ADOPT AN ELECTION PERIOD POLICY

(1) A Council must prepare, adopt and maintain an election period policy in relation to procedures to be applied by Council during the election period for a general election.

(2) A Council must prepare and adopt an election period policy as required by subsection (1)—

(a) by 31 March 2016; and

(b) following the general election on 22 October 2016, continue to maintain the election period policy by reviewing and, if required, amending the policy not later than 12 months before the commencement of each subsequent general election period.

(3) An election period policy must include the following—

(a) procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the election period before a general election;

(b) limits on public consultation and the scheduling of Council events;

(c) procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.

(4) A copy of the election period policy must—

(a) be given to each Councillor as soon as practicable after it is adopted; and

(b) be available for inspection by the public at the Council office and any district offices; and

(c) be published on the Council's Internet website maintained under section 82A.

(5) In this section—

"inappropriate decisions" made by a Council during an election period includes any of the following—

(a) decisions that would affect voting in an election;

(b) decisions that could reasonably be made after the election.