

Election Period Policy

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Election Period
20 September 2016 - 22 October 2016

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1 Introduction

The Local Government Act 1989 (the Act) provides that during the election period certain prohibitions apply to the general functions and powers of Council. It is during this time that Council enters what is commonly referred to as the 'caretaker' period.

The election period is defined by the Act as starting on the last day for nominations and ending at 6pm on the Election Day. The last day for nominations is the day that is 32 days before the Election Day.

The election period for the 2016 local government elections will commence at 12.00 pm on 20 September 2016 and end at 6pm on 22 October 2016.

2 Purpose

The 2016 general election in Mount Alexander Shire Council will be conducted by postal voting, which closes at 6pm Friday 21 October 2016.

The Election Period Policy has been developed in order to ensure that the general elections for Mount Alexander Shire Council on Saturday 22 October 2016, and any subsequent elections, are conducted in a manner that is ethical, fair and equitable, and are publicly perceived as such.

The Policy will facilitate the continuation of the ordinary business of local government in the Shire throughout the election period in a responsible and transparent manner, in accordance with statutory requirements and established 'caretaker' conventions.

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 Councillors as candidates in the election.

3 Definitions

Where terms used in this Policy are defined in the Act, their use in this Policy is consistent with the definitions in the Act. Relevant sections of the Act are included in Section 13.

Definitions used in this Policy which are not defined by the Act are:

Caretaker period

Has the same meaning as 'election period' in section 3(1) of the Act, and means the period that starts on the entitlement date and ends at 6pm on Election Day.

Public consultation

Means a process that involves an invitation or invitations to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy, and includes discussion of that matter with the public.

Significant decision

Means an irrevocable decision that significantly affects the municipality.

4 Application of Policy

Council will function in accordance with this Policy during the election period commencing at 12.pm 20 September 2016 and ending at 6.00 pm on 22 October 2016.

4.1 Role of Chief Executive Officer

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

- All Councillors are informed of their roles and responsibilities 30 days prior to the commencement of the election period;
- All Council officers are briefed on their roles and responsibilities and receive a quick reference guide prior to the commencement of the policy; and
- 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.

5 Decisions by Council

5.1 Major Policy Decisions

Major Policy Decision is defined by the Act and means a decision:

- Relating to the employment or remuneration of a Chief Executive Officer (CEO), other than a decision to appoint an acting CEO;
- To terminate the appointment of a CEO;
- To enter into a contract the total value for goods and services which exceeds \$150,000 or works which exceeds \$200,000; or
- To exercise any entrepreneurial powers under section 193 of the Act if the sum of the total investment involved and the total risk exposure assessed in respect of the proposal exceeds circa \$210,000.

Prohibition on Council

During the election period, Section 93 of the Act prohibits Council making major policy decisions.

Any major policy decision made during the election period is deemed to be invalid under the Act.

Extraordinary Circumstances

If Council considers that there are extraordinary circumstances where the Shire's community would be significantly disadvantaged by the Council not making a particular Major Policy Decision, the Council will, by resolution, request an exemption from the Minister for Local Government in accordance with section 93A(2) of the Act.

5.2 Significant Decisions

During the election period, Council will avoid making decisions that significantly affect the municipality and unreasonably bind the incoming Council.

6 Public Consultation

6.1 Right to Postpone

Some public consultation activities may be necessary during the election period to facilitate the day to day business of Council and ensure matters continue to be proactively managed. Any such public 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 public consultation on any contentious or politically sensitive matter once the election period has commenced.

6.2 Statutory Requirements

Public consultation required under the Planning and Environment Act 1987, or matters subject to Section 223 of the Act are necessary and continue as per usual business.

7 Council Publications

7.1 Prohibition on Publishing Material during the Election Period

Section 55D of the Act prohibits Council from printing, publishing or distributing any advertisement, handbill, pamphlet or notice during an election period unless it has been certified, in writing, by the Chief Executive Officer.

The Chief Executive Officer must not intentionally or recklessly certify a publication that contains electoral matter, unless that material is only about the election process.

7.2 Certification of Publications

Publications to be printed, published or distributed during the election period must first be certified by the Chief Executive Officer.

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:

- i. Certified by the Chief Executive Officer in accordance with Section 55D of the*
- ii. Local Government Act 1989.*

Copies of all certified documents will be retained on Council records.

Publications which require certification include:

- Brochures, pamphlets, handbills, flyers, magazines and books;
- Community newsletters;
- Reports (other than agenda papers and minutes in accordance with Section 7.7);
- Advertisements, Council Column and notices, except newspaper notices of meetings;
- New website material;
- Social media publications (which includes Facebook and Twitter posts);
- 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 Councillors' speeches.

7.3 Prohibited Material

Electoral matter is defined in the Act and means any 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, or
- An advertisement in a newspaper announcing the holding of a meeting.

A publication is taken to contain electoral matter if it contains an express or implicit reference to, or comment on:

- The election; or
- A candidate in the election; or
- An issue submitted to, or otherwise before, the voters in 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
- Publicises the achievements of the elected Council.

7.4 Council Publications Including Councillor Information

Any reference to Councillors standing for re-election in Council publications printed, published or distributed during the election period must not include promotional text.

7.5 Website

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.

Councillor contact information will remain available on the website during the election period.

Any material published on Council's website during the election period must be certified by the Chief Executive Officer.

7.6 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 Councillors.

The Annual Report does not require certification by the Chief Executive Officer, however any publication of an extract or summary of the Annual Report will require certification.

7.7 Council and Committee Agendas and Minutes

Agenda papers and minutes of Council and committee meetings do not require certification by the Chief Executive Officer unless they are printed or published for a wider distribution than normal.

Questions from the gallery during Public Question Time will be considered by the Chair to ensure that they comply with the principles of the Act in relation to the Election Period and this policy. In accordance with the Local Law No.1 Meeting Procedures, the Chair may disallow a question if it breaches the requirements of the Local Law. During the Election Period questions will also be reviewed to ensure they do not breach the requirements of the Act or this Policy.

7.8 Council report election period statement

An election period statement will be included in all Council reports to Council or to a special committee of Council for a decision during the election period.

The election period statement will specify one of the following:

- iii. *The recommended decision is not a “Major Policy Decision”, as defined in section 93A of the Local Government Act 1989, or a “Significant Decision” within the meaning of the Election Period Policy.*
- iv. *The recommended decision is not a “Major Policy Decision”, as defined in section 93A of the Local Government Act 1989. The recommended decision is a “Significant Decision” within the meaning of the Election Period Policy, but an exemption should be made for the following reasons (insert reasons for making an exemption).*
- v. *The recommended decision is to seek an exemption from the Minister because the matter requires a “Major Policy Decision”, within the meaning of section 93A of the Local Government Act 1989.*
- vi. *The recommended decision is a “Major Policy Decision”, as defined in section 93A of the Local Government Act 1989, but an extraordinary circumstances exemption was granted by the Minister for Local Government on (insert date).*

7.9 Social Media

Any publication on social media sites including Facebook, Twitter and any other form of social media must be certified by the Chief Executive Officer during the election period.

Public posted comments;

- The ability for members of the public to post comments on any Council social media sites will be removed for the duration of the election period; or
- Officers 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.

8 Council Resources

8.1 Application of Resources

Council resources, including offices, vehicles, officer time, hospitality, services, property, equipment and stationery must be used exclusively for normal Council business during the election period and must not be used in connection with any election campaign or issue.

8.2 Executive Assistant to the CEO

Executive Assistant to the CEO, Governance officers, or any other staff member, will not be asked to undertake any tasks connected directly or indirectly with the election campaign of a Councillor standing for re-election.

8.3 Use of Council Equipment by Councillors

Councillors may continue to use any Council equipment provided to them to facilitate their performance of normal Council duties, subject to existing protocols and terms of use. Councillors standing for re-election must not use Council equipment as a resource to assist with election campaigns.

8.4 Councillors' Entitlement to Reimbursement

Reimbursements of Councillors' out-of-pocket expenses during the election period will only apply to costs that have been incurred in the performance of normal Council duties, and not for expenses that support or are connected with a candidate's election campaign.

8.5 Council Branding

No Council logos, letterheads, or other corporate branding will be used for, or linked in any way to, a candidate's election campaign.

8.6 Cessation of ward-specific publications and printing of community newsletters

Ward-specific publications, printing of community newsletters and the Mayor's column will not be arranged or resourced by Council during the election period.

8.7 Officers' Discretion

The Council will ensure that due propriety is observed in the use of all Council resources, and Council officers are required to exercise appropriate discretion in that regard. Where the use of Council resources appears to relate to the election campaign of a Councillor standing for re-election, the matter must be referred to the Chief Executive Officer or his or her delegate.

9 Media Services

9.1 Restriction on Services

Council's Communications Unit undertake the promotion of Council activities and initiatives.

During the election period this team's services must not be used in any way that might promote a Councillor as an election candidate.

Council publicity during the election period will be restricted to communicating normal Council activities and initiatives, and is subject to certification by the Chief Executive Officer.

9.2 Media Releases/Spokespersons

Media releases will minimise references to specific Councillors and will not identify any Councillor in a manner that could promote a Councillor as an election candidate. Where it is necessary to identify a spokesperson, the Chief Executive Officer or his or her delegate will be consulted.

Media releases will require certification by the Chief Executive Officer.

9.3 Councillors

Councillors will not use their position as an elected representative or their access to Council Officers and other Council resources to gain media attention in support of an election campaign.

9.4 Council Employees

During the election period no Council employee may make any public statement that relates to an election issue unless prior approval has been obtained by the Chief Executive Officer or his or her delegate.

10 Functions and events

Functions and events are defined as 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 Council and its community.

Function or events may take the form of conferences, workshops forum, launches, promotional activities and social occasions such as dinners, receptions and balls.

10.1 Functions or events staged by external bodies

Councillors may continue to attend events and functions during the election period hosted by external bodies.

10.2 Council events and functions

Council organised events and functions during the election period will be limited to:

- Those essential to the operation of the Council;
- Annual events that are included in the Events Calendar; or
- Those that have been approved by the Chief Executive Officer.

10.3 Speeches / key note addresses

Councillors may only make speeches at Council organised or sponsored events and functions with the prior approval by the Chief Executive Officer.

The preference will be for the any such speeches or key note addresses to be delivered by the Chief Executive Officer or delegate.

10.4 Publication of promotional material

Any promotional material concerning a Council organised or sponsored function or event must be published and distributed in accordance with this Policy.

11 Information

11.1 Candidates' Access to Information

All election candidates have equal rights to information relevant to their election campaigns from the Council administration. While it is important that sitting Councillors continue to receive information that is necessary to fulfil their existing elected roles, neither Councillors nor candidates will receive information or advice from Council officers that may improperly advantage candidates in the elections (which includes internal publications).

There will be complete transparency in the provision of all information and advice during the election period.

11.2 Information Request Register

The Governance Unit will maintain a publicly available Information Request Register during the election period. This Register will record all requests relating to electoral matters and non-routine requests for information by Councillors and candidates, and the responses given to those requests.

11.3 Improper Use of Position

Sections 76D and 76E of the Act prohibit Councillors from misusing or inappropriately making use of their position. A breach of section 76D attracts serious penalties, including possible imprisonment.

12 Assistance to Candidates

12.1 Role of Returning Officer

All election related enquiries from candidates, whether sitting Councillors or not, will be directed to the Returning Officer or, where the matter is outside the responsibilities of the Returning Officer, to the Chief Executive Officer or his or her delegate.

12.2 Candidate Information

Information is available to prospective candidates from the Municipal Association of Victoria and the Victorian Electoral Commission to assist them in running and nominating for Council.

Candidates will be informed of their obligation to complete a Nomination Form which will be available from the Returning Officer, accompanied by the nomination fee.

Candidates will also be informed of the requirements to complete and submit an 'Election Campaign Return' to the Chief Executive Officer within 40 days after the election day. The return must contain details of any campaign donation or gift valued at more than \$500 which was received between 30 days after the previous election and 30 days after the current election.

13 Relevant Sections from the Local Government Act 1989

13.1 Section 3 (1) Definitions

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;

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

13.2 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.

13.3 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.

13.4 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.

13.5 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.

13.6 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.