



## COUNCIL POLICY

<b>Election Period Policy</b>	Policy No:	
	Adopted by Council:	21 Aug 2019
	Next review date:	Aug 2023
Senior Manager:	Chief Executive Officer	
Responsible Officer:	Chief Executive Officer	
Functional Area:	Governance	

### Introduction & Background

Section 93B of the Local Government Act 1989 requires all Councils to adopt and maintain an Election Period Policy to explain to their communities how they will conduct their business immediately prior to an election (election period).

Section 93B of the Act also requires all Councils to review, and if required, amend this policy no later than 12 months before the commencement of the next general election period.

This policy will ensure Council Elections are not compromised by inappropriate electioneering by existing Councillors, actions and decisions which could be perceived as influencing voters are avoided and the authority of the incoming council is safeguarded.

### Purpose & Objectives

This policy provides a framework for Councillors and staff and outlines expected behaviours for the conduct of Council business during the lead-up to the general election for 2020.

The policy will ensure that the election is conducted in a transparent and accountable manner, the highest standard of governance is achieved and the statutory requirements of the *Local Government Act 1989 (the Act)* are met.

The policy will achieve greater consistency and rigour in Council procedures and reduce ambiguity and confusion surrounding caretaker arrangements in the 32 days leading up to the conduct of the general election (election period).

Once the 2019 review of the Local Government Act 1989 has been completed, this policy will again be reviewed and updated so that it reflects the amendments to the Act.

Council is committed to:

- ensuring that the ordinary business of local government in West Wimmera continues throughout an election period in a responsible and transparent manner and in



accordance with statutory requirements and established 'caretaker' conventions;

- ensuring that the ongoing ordinary business of Council is kept separate from Councillors' activities which relate to the election;
- ensuring that in the run-up to an election, Council does not make decisions which inappropriately bind the next Council;
- avoiding making significant new policies or decisions that could unreasonably bind a future Council; and
- ensuring 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.

### Definitions

#### ***Election Period***

The statutory caretaker requirements apply during the 'election period'. For the 2020 Council elections, this means that the mandatory election period will be from midnight at the end of 22 September 2020 to 6 pm on 24 October 2020 (Election Day). (A Council may at its discretion decide to implement caretaker arrangements from an earlier date.)

#### ***Election candidates***

All sitting Councillors will be considered as being election candidates until the close of nominations.

#### ***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 the election) (s3(1A)).

Includes, but is not limited to, material that deals with the election or election candidates or issues of contention in the election, e.g.

- publicity of the strengths or weaknesses of a candidate
- advocacy of the policies of the Council or of a candidate
- response to claims made by a candidate
- publicity of achievements of the elected Council

### Policy Details

The policy addresses decisions during elections, use of Council resources, Council publications, and media and communications issues.

#### **1. Preventing Inappropriate Decisions and Misuse of Resources**

Given the relatively short election period, Council will reschedule most decisions until after the new Council commences its term, or if that is not appropriate, bring decisions forward so they are determined before the election period starts.



Council will continue to hold council meetings during the election period; however, the following decisions will be avoided completely in the 32 days leading up to the general election:

### Major Policy Decisions

- a) the employment or remuneration of a Chief Executive Officer under Section 94, other than a decision to appoint an acting Chief Executive Officer;
- b) the termination of a Chief Executive Officer under Section 94 of the Act;
- c) entering 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) the use of entrepreneurial powers 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 of the preceding financial year. *[For the 2020 caretaker period 1% of the 2019/2020 rate revenue is \$67,876. This does not include revenue from special rates or special charges.]*

Other types of decisions that Council will not make during an election period are:

1. Allocating community grants or other forms of direct funding to community organisations.
2. Major planning scheme amendments.
3. Changes to strategic objectives or strategies in the Council Plan.
4. Any decisions of a significant nature and which would unnecessarily bind an incoming Council.

Council commits that any other decision will be considered only if absolutely necessary for Council operational purposes or pursuant to a statutory requirement. It is noted that to avoid making certain decisions during an election (other than decisions prohibited under section 93A) is not legally binding; however, if it becomes important to make a decision contrary to this policy during the election period, the necessity will need to be demonstrated to the community.

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 Local Government for an exemption from the application of section 93A to the major policy decision specified in the application.

Council will consult with Local Government Victoria before writing to the Minister and confirm what details should be included in the application to avoid unnecessary delays.

It is understood that Council cannot assume that an application will be granted. Scope to grant exemptions is limited because the Minister must be satisfied that the circumstances are extraordinary. The Minister will also consider whether granting the application is in the public interest.



Should a Council make a major policy decision within the election period, the decision is invalid. [s93A(4)]

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. S93A(5)

Papers prepared for Council meetings during the election period will be carefully vetted by the Chief Executive Officer to ensure that no agenda item is included that could potentially influence voters' intentions at the forthcoming election or could encourage Councillor candidates to use the item as part of their electioneering. Council commits that all Councillors will refrain from moving motions or raising matters at a meeting that could potentially influence voting at the election.

### **Use of Council resources**

Public resources must not be used in any way that would influence the way people vote in elections or give Councillors any inappropriate real or perceived electoral advantage. Councillors will be treated in the same way as other candidates on access to council resources. The following guidelines will ensure that due propriety is observed in the use of and access to staff, property, equipment and other resources during the election period.

- Councillors will continue to be provided with resources during the election period to continue to perform their elected role.
- Council resources, including officers, support staff, email services, equipment (ie: computers, ipads, photocopiers, motor vehicles), branding and stationery, are only to be used for normal Council business and are not to be used for any election campaign activities.

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

Staff must:

- avoid assisting Councillors in ways that are or could create a perception that they are being used for electoral purposes
- report any interest in being involved privately in the election campaign of any candidate to the Chief Executive Officer
- not provide any information to any candidate or prospective candidate other than information that is available to the general public and will direct all election enquiries to the Returning Officer
- report to the Chief Executive Officer when the use of resources might be construed as being related to a candidate's election campaign
- Not make any public statement that relates to an election issue unless such statements have been approved by the Chief Executive Officer.
- Not promote any Councillors in social media.

Councillors must:

- Not use Council resources for any election campaign activities except as provided for under this policy. These resources include but not limited to Council provided motor Vehicle, Council uniforms, IT equipment, telephone, stationery.



- Councillors will reimburse the Council for usage of those services during the election period that exceeds normal usage levels.
- Not use their position as an elected representative or their access to Council staff and other Council resources to gain media attention in support of an election campaign
- Not ask Councillor support staff to undertake any tasks indirectly or directly connected with a Councillor candidate's election campaign
- Not exert undue influence over the timing of works or the delivery of Council services that may result in a political gain for electoral purposes.
- Adhere to all provisions of Section 76D of the Act - Misuse of Position.

Where Councillors have Council funded services such as internet connections, and where it is impractical for Councillors to discontinue their use of these during the election, Councillors will reimburse the Council for usage of those services during the election period that exceeds normal usage levels.

### **2. Limiting public consultation and council events**

Council will defer any scheduled Community Forum until after the election period.

Council will not accept any questions from members of public without the question being placed on the Council agenda, as it constitutes community consultation. The Chief Executive Officer will review all questions on notice and will make a decision if an item could be placed on Council's agenda.

Consultation is an integral part of Council's policy development process and operations. However there are concerns that consultation undertaken close to a general election may become an election issue in itself and influence voting. Issues raised through the consultation and decisions that follow may also unreasonably bind the incoming Council.

Where events occur and whether or not a Councillor is to make a speech, Councillors will be reminded that they are representing Council and are not to use the opportunity for electioneering.

Functions or events for the purpose of electioneering must not be resourced or publicised by the Council.

Material printed or disseminated during the election period to publicise a function or event must be subject to the certification process.

### **3. Equitable access to Council information**

Councillors will be treated in the same way as other candidates with respect to access to the council held information. The following guidelines will ensure that due propriety is observed in the use of and access to information during the election period.

- Councillors may continue to automatically access council held documents during the election period, but only as is necessary for them to perform their elected role and functions.



- Information and briefing material prepared and provided to Councillors must be necessary to the carrying out of the Councillor's role and must not be used for election purposes.
- Any document made available to Councillors will also be made available to candidates.
- Applications for access to council information by all parties will be processed by the Chief Executive Officer, who will ensure that information made available to one candidate is accessible to all candidates.

### **Council Publications**

#### **s. 55D – Prohibition on Council**

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. (This power may not be delegated to another member of Council staff.) This does not include publication of any document published before the commencement of the election period (but still available after commencement, e.g., on Council's website) and publication of any document required to be published in accordance with, or under, any Act or regulation, e.g., rate notices, food premises registrations.

All publications including, newsletters, advertisements and notices, media releases, leaflets and brochures and mail outs during the election period will be certified by the Chief Executive Officer that they do not contain electoral matter before being printed or published or distributed. (This power may not be delegated to another member of Council staff.) This also applies to the publication of such material on the Council's website. 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.

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.

Council staff will avoid all publication activity, including updated or new information added to its website during the election period except where printing, publishing or distributing a document is essential for the conduct of Council operations.

The Act imposes these limitations during the election period to ensure the Council does not publish material with public funds that may influence, or be seen to influence people's voting decisions.

### **Annual Report**

Council will produce its 2019-2020 Annual Report and submit it to the Minister for Local Government in accordance with the Act. The Annual Report may 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 but will fulfil its statutory obligations on reporting matters. It may also be required for the Annual Report to be the subject of a Special Meeting of Council to confirm the completion of the Annual Report. If it is appropriate, the special meeting will be held post-election period. The wider distribution of annual report and placing the annual report on Council website will be done after the election.

### Other

Emails that are part of the normal conduct of Council business will not require certification; however any emails with multiple addressees, used for broad communication, will be subject to the certification process.

All reports listed for consideration by Council through agendas prepared during the election period will be checked by the Chief Executive Officer for compliance with section 55D. An 'Election Period Statement' will be included in every report submitted to the Council or Council Committee for a decision.

The Electoral material, including pamphlets, posters and notices will not be visible or available at any council premises, including libraries, during the election period. The only exception to this is material issued by the Returning Officer for the purpose of conducting the election.

Councillors may use the title 'Councillor' in their election material as they continue to hold the positions in the period; however to avoid confusion, Councillors must ensure that any election publication using the title Councillor clearly indicates that it is their own material and does not represent Council.

Requests for information which require significant resources to be devoted to making a response or which might be perceived to support an election campaign will be referred to the Chief Executive Officer for consideration.

### Expenses incurred by Councillors

Claims for the reimbursement of expenses shall only relate to expenditure incurred whilst conducting Council business in accordance with *Council's Expense Entitlement & Support Policy* and not election activities.

### Media/Communications issues

Media Releases and other media statements are regarded as documents that require certification by the CEO. All official media statements will only be made by the Chief Executive Officer.

Media Releases or other media statements will not refer to specific Councillors or feature any photograph, quote or name of incumbent Councillors during the election period. Where it is necessary to make or clarify any public statement, comment on sensitive or political issues or identify a spokesperson in relation to an issue, the matter must be referred to and approved by the Chief Executive Officer.



Media statements dealing with their election campaign must be issued by Councillors privately. Statements must be clearly communicated as personal opinion and not undermine the standing of the Council in the community.

Staff will not provide advice or assistance in the preparation of media releases or other media statements that contain electoral material.

Council staff must not make any public statement that can be interpreted as a political comment or have an influence on the electoral process.

### Social Media

Any publication on social media sites which are auspice by the Council is to be certified by the CEO.

Council staff will undertake constant monitoring of social media site (Facebook) during the election period to ensure no electoral matter is posted.

For the duration of the election period, the ability for the public to post comments on Council's social media sites will be disabled.

### Website

Council's website will not be used to convey information that could be regarded as electoral material but will contain information about the election process.

Council's website will be checked at the start of the election period to ensure that any information that might be regarded as likely to influence how people vote will be removed, including photos of Councillors at publicity events. Profiles of Councillors will also be removed but contact details and photos will remain.

### Responsibilities

The Chief Executive Officer is responsible for overseeing adherence to the policy.

Councillors and staff are responsible for reporting any breach or suspected breach of this policy to the Chief Executive Officer.

### Stakeholders

The following people are directly affected by the policy:

Councillors

Chief Executive Officer

Council Directors

### Review

Following the 2020 General Election Council will continue to maintain the policy by reviewing and, if required, amending the policy not later than 12 months before the commencement of each subsequent general election period.





### **Communication/Implementation**

The policy must be transparent and accessible. It will be communicated to Councillors and staff in accordance with the Council's policy administrative processes. It will also be made public on the council's website and available in hardcopy for public inspection. Copies will be made available to each Councillor on Docs on Tap.

### **Charter of Human Rights Compliance**

It is considered that this policy does not impact on any human rights identified in the *Charter of Human Rights & Responsibilities Act 2006*.

Policy Adopted:	Ordinary Meeting 24/03/16	Minute Book Page 33516	RecFind 16/001332
Policy Reviewed:	Ordinary Meeting 21/08/19		RecFind E19/000518



## Procedure

**Operation:** This procedure applies during the Election Period (i.e., from midnight at the end of 22 September 2020 to 6.00pm on 24 October 2020 (election day). The procedure is to be used for certifying any publication, pursuant to s.55D of the Local Government Act 1989.

**Background:** All requests for advertisements or publications during the Election Period must be certified by the CEO, to confirm that they do not contain election material, prior to being printed or published or distributed.

**Definitions:** "Publication" means any advertisement, pamphlet, handbill, press release, notice or similar.

### Process:

- All publications during the Election Period must be emailed to the Governance Officer at [eso@westwimmera.vic.gov.au](mailto:eso@westwimmera.vic.gov.au) so that arrangements for certification can be made. If there is any doubt about whether the material is subject to the procedure, it should be forwarded to the above email address, for checking.
- The role of the Governance Officer is to read the proposed publication and check that no election material is present (unless it is factual election process information).
- The Governance Officer will send the proposed publication to the CEO via email with suggested wording as set out below.
- CEO to send back approval and certify in writing (email is acceptable and preferable). CEO to use a Corporate signature that is used in emails, certification wording is below. This certification power cannot be delegated to any other person.
- When certification is received back from CEO, the email is to be saved into the RecFind system "Election – 2020 - Management - Certified Publications". The naming convention to be used when saving the email is "Certified Publication - (insert name of publication) - (date)." This will enable a record to be maintained of all certified publications.

Standard text to accompany Governance Officer email to CEO:

*"This material has been checked and does not contain any electoral or electoral related matter to the best of my knowledge. In accordance with the requirements of s.55D(1) of the Local Government Act 1989 can you please certify in writing that you authorise for this material to be printed, published or distributed."*

Standard certification to be used by the CEO as part of "corporate signature" for certification emails:

*"I certify that the attached material is suitable for printing, publishing or distributing on behalf of West Wimmera Shire Council."*