



Policy Title:	<b>Election Period (Caretaker) Policy</b>	
Date of Adoption:		
Adoption Method:	<input checked="" type="checkbox"/> <b>Council</b> <input type="checkbox"/> <b>CEO</b> <input type="checkbox"/> <b>Other (please specify)</b>	
CEO Signature:		<b>Date:</b>
Responsible Officer and Unit:	Coordinator Governance	
Nominated Review Period:	<input type="checkbox"/> <b>Annually</b> <input checked="" type="checkbox"/> <b>Other: 12 months prior to each General Election</b>	
Last Review Date:	25 September 2019 <sup>12</sup>	
Next Review Date:	To be completed by 23 September 2023. (At least once in each Council term and, no later than 12 months prior to the commencement of an election period)	
Purpose / Objective:	To ensure that the ordinary business of Council continues throughout the election period in a responsible and transparent manner, and in accordance with statutory requirements and established 'caretaker conventions'.	
Background / Reasons for Policy:	<p>Section 69 of the <i>Local Government Act 2020 (Vic)</i> (The Act) requires Council to include an election period policy in its Governance Rules. The Act stipulates that: the policy prohibit certain decisions during the election period (ss.69(2) and (3); that certain decisions if made in the election period will be invalid (69(4)) and that any person who suffers loss or damage as a result of acting in good faith on an invalid Council decision is entitled to compensation (69(5)).</p> <p>These statutory requirements are minimum governance standards only and this policy, to be read in conjunction with the Councillor Code of Conduct, further defines the expectations on Council, Councillors and Council staff during the period prior to the conduct of Council elections.</p>	
Related Policies:	Councillor Code of Conduct Staff Code of Conduct Councillor Support and Expenses Policy Community Consultation Framework Media Policy Social Media Policy Social Media Guidelines	
Related Legislation:	<i>Local Government Act 1989 (Vic)</i> <i>Local Government Act 2020 (Vic)</i> (the Act) Local Law 10 – General Purposes and Amenity Local Law Local Law 11 – Meeting Procedure Local Law	

<sup>1</sup> Minor amendment made 7 November 2019 and approved by CEO to correct date of commencement of election period

<sup>2</sup> Amendments made June 2020 and approved by CEO to replace repealed provisions and terminology from the *Local Government Act 1989* and incorporate new provisions of *Local Government Act 2020*

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## Introduction

The election period starts at the time that nominations close on nomination day; and ends at 6pm on election day.

The election period for the upcoming elections will therefore apply from 12pm (noon) on the day nominations close, Tuesday 22 September 2020, until 6pm on election day, Saturday 24 October 2020, inclusive.

## 1. Definitions

Term	Definition
<b>Caretaker conventions</b>	Arrangements implemented in the period prior to an election that aim to ensure Council actions do not interfere with the integrity of the election process and aim to protect the authority of the incoming Council.
<b>Election manager</b>	The Victorian Electoral Commission (VEC) or a person appointed in writing by the VEC.
<b>Election period:</b>	The period that starts at the time that nominations close on nomination day and ends at 6pm on election day. This period is commonly referred to as the caretaker period.
<b>Electoral material</b>	An advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper that is only announcing the holding of a meeting.
<b>Electoral matter:</b>	<p>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 election manager for the purposes of conducting an election.</p> <p>Without limiting the generality of the definition, electoral matter is to be taken to be matter intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on –</p> <ul style="list-style-type: none"> <li>a) The election; or</li> <li>b) A candidate in the election; or</li> <li>c) An issue submitted to, or otherwise before, the voters in connection with the election.</li> </ul>
<b>Events and functions:</b>	Gatherings of internal and external stakeholders to discuss, review, acknowledge, communicate, celebrate or promote a program, strategy or issue which is of relevance to Council and its community and may take the form of conferences, workshops, forums, launches, promotional activities and social occasions such as dinners, receptions and balls.
<b>Prohibited decision</b>	Any Council decision during the election period for a general election that— <ul style="list-style-type: none"> <li>(a) relates to the appointment or remuneration of the Chief Executive Officer but not to the appointment or remuneration of an Acting Chief Executive Officer; or</li> <li>(b) commits the Council to expenditure exceeding one per cent of the Council's income from general rates, municipal charges and service rates and charges in the preceding financial year [<i>estimated at \$509,000 as at June 2020</i>]; or</li> <li>(c) the Council considers could be reasonably deferred until the next Council is in place; or</li> <li>(d) the Council considers should not be made during an election period; and</li> </ul>

	Any Council decision during the election period for a general election or a by-election that would enable the use of Council's resources in a way that is intended to influence, or is likely to influence, voting at the election.
<b>Publish:</b>	Any means, including by publication on the internet.

## 2. Scope

This policy applies during an election period to cover:

- decisions that are made by Council, a committee having Council delegated power, or person acting under delegation by Council
- any material that is published by Council or on Council's behalf
- public consultation activities
- scheduling, attendance and participation in functions and events
- the use of Council resources
- access to Council information
- media services issues (including media advice, media releases / spokespersons) and publicity campaigns.

Any such decisions or actions, if allowed at all, must only be made or taken subject to the following principles.

## 3. Policy principles

This policy must be complied with during an election period, or such longer period as resolved by Council, if any of the following apply:

- a prohibited decision is being considered
- written material which has reference in it to a candidate (which includes sitting Councillors) or the election or an issue before the voters in connection with the election) is about to be published
- a Council publication is being created
- a public consultation process is being considered
- a sitting Councillor is planning to attend a function or event
- Council staff supply administrative or resource support to Councillors
- a Councillor requests access to Council information
- a sitting Councillor requests media advice or services.

## 4. Decisions during the election period

Council, a committee acting under delegation given by Council, or a person acting under delegation given by the Council or the Chief Executive Officer, must not make a prohibited decision during the election period for a general election.

### 4.1 Prohibited decisions during election period

Section 69(2) of the Act requires that the election period policy prohibits Council making certain decisions during the election period for a general election. These are defined in clause 1 of this policy and are outlined further below in clauses 4.1.1 to 4.1.4.

Additionally, section 69(3) of the Act requires that the policy prohibit any Council decision during the election period for a general election or a by-election that would enable the use of Council's resources in a way that is intended to influence, or is likely to influence, voting at the election. These matters are considered below in clauses 5-10 of this policy.

#### **4.1.1 Decisions regarding appointment and remuneration of the Chief Executive Officer**

Decisions that relate to the appointment or remuneration of the Chief Executive Officer will not be made during the election period for a general election.

#### **4.1.2 Decisions regarding Council expenditure**

Decisions that commit the Council to expenditure exceeding one per cent of the Council's income from general rates, municipal charges and service rates and charges in the preceding financial year will not be made during the election period for a general election. [As at 19 June 2020, this figure was \$509,000]

#### **4.1.3 Decisions that could be reasonably deferred until the next Council is in place**

Decisions that could reasonably be deferred until the next Council is in place will be scheduled for determination by the incoming Council. In determining whether a decision could be reasonably deferred, consideration will be given to whether the matter under consideration is urgent and cannot be deferred without having a negative impact on the Council, the municipality or the local community.

#### **4.1.4 Decisions that should not be made during the election period**

The following is a non-exhaustive list of decisions (whether made by Council, a delegated committee of Council or a staff member with delegated authority) that Council considers should not be made during the election period:

- allocation of community grants or other direct funding to community organisations
- allocation of discretionary funding
- major planning scheme amendments
- sale or discontinuance of roads
- sale or exchange of land
- leasing of land
- changes to strategic objectives and strategies in the Council Plan.

#### **4.2 Scheduling of Decisions**

Unless 'extraordinary circumstances' apply the CEO will ensure that the types of decisions outlined in 4.1.3 and 4.1.4 are either:

- considered by Council prior to the election period, or
- scheduled for determination by the incoming Council.

#### **4.3 Decisions by the CEO**

In the case of a decision referred to the CEO for approval during the election period, in deciding whether to give approval, the CEO will have regard to a number of factors including:

- the urgency of the issue (that is, can it wait until after the election)
- the possibility of financial repercussions if it is deferred
- whether the decision is likely to be controversial
- the best interests of Council.

#### **4.4 Announcement of decisions made prior to the election period**

This policy applies only to the actual making of decisions, not the announcement of decisions which have been made prior to the election period. However, as far as practicable such announcements should be made before the election period begins.

## 4.5 Conduct of Council Meetings

The following adjustments will be made to the conduct of Council Meetings during the election period:

- public question time will be suspended.
- councillors will limit their discussion during debate to the topic under consideration and will avoid raising electoral matter where possible.
- councillors will not raise items that contain or relate to electoral matter.
- no officer report shall be presented to Council during the election period unless it contains an express statement by the CEO that a decision on the matter would not constitute a prohibited decision.

## 5 Council publications

### 5.1 Prohibition on publishing materials during the election period

It is prohibited under section 304(2) of the Act for a Councillor or a member of Council staff to use Council resources to intentionally or recklessly print, publish or distribute, or cause, permit or authorise to be printed, published or distributed any electoral material during the election period on behalf of, the Council, unless the electoral material only contains information about the election process or is otherwise required in accordance with, or under, any Act or regulation.

Councillors are, however, able to publish campaign material on their own behalf and at their own cost, but must assume responsibility for compliance with the relevant sections of the Act and cannot purport for that material to be originating from, or authorised by Council (i.e. by use of Council logos).

The word 'publication' should be read broadly to include printed material, electronic information and web-based productions.

#### 5.1.1 Publication approval process

The CEO will ensure that information is provided to Councillors, staff and contractors prior to the election period to preclude unauthorised publication of materials during an election period.

All advertisements, handbills, pamphlets or notices for printing, publication (including updates to Council's websites) or distribution during the election period will be approved by the CEO using the *Request for approval of publication* form (Attachment 1) during the election period and the process for approval will be as follows:

- publication authors are to check that no electoral matter is included when preparing a publication and submit the completed publication to the Coordinator Governance for review
- the Coordinator Governance is to confirm that no electoral matter is included, and return the publication to the author (if electoral matter is present) or submit it to the CEO for approval (if it complies with the requirements of the Act).
- the CEO is to approve or reject the publication and return it to the Coordinator Governance
- the Coordinator Governance is to maintain a register of all documents approved under this section.

### 5.1 Considerations of CEO in granting publication approval

Except as described more specifically elsewhere in this policy, in considering whether to grant approval for the publication of material during the election period, the CEO will not permit any materials to be published which include reference to the following:

- a candidate in the election
- a current Councillor
- the strengths or weaknesses of a candidate
- response to claims made by a candidate
- advocacy for, or criticism of, the policies of Council or of a candidate

- publicity for the achievements of the elected Council
- an issue before the voters in connection with the election.

### **5.3 Council websites**

During the election period Council websites will not contain material precluded by this policy under clause 5.2. Any references to the election will only relate to the election process. Information about Councillors will be restricted to names and contact details.

### **5.4 Social media**

For the duration of the election period, administrator access to Council's social media channels will be restricted to the Communications Unit to ensure the risk of publishing material in breach of the policy is minimised. The CEO will determine any other processes and resourcing necessary to moderate social media in accordance with this policy.

### **5.5 Email usage**

The CEO will ensure that information is provided to Councillors, staff and contractors prior to the election period to preclude unauthorised publication of materials via the Council email system during an election period. Such information will include support in recognition of material that may be defined as 'electoral material', such as described in clause 5.2, and instruction to ensure that material that may be considered pertinent to the election is not circulated more widely than normal without authorisation.

### **5.6 Annual Report**

Should the publication date of the Annual Report occur during the election period, information about Councillors will be restricted to what is required by *the Local Government (Planning and Reporting) Regulations 2014* and membership of special committees and other bodies to which they have been appointed by Council.

### **5.7 Council publications**

Any Council publication which is potentially affected by this policy will be reviewed by the Coordinator Governance, Manager Communications or the CEO to ensure that any circulated, displayed or otherwise publicly available material during the election period does not contain content that may be construed as 'electoral matter'.

### **5.8 Council noticeboards and buildings**

During the election period Council noticeboards and buildings will only be used for display of material that only contains information about the election process itself or information that would not reasonably be determined to be 'electoral material'.

## **6 Consultations**

Public consultation of a limited kind normally associated with the routine administration of planning, building, traffic, or other matters will continue through the election period. However, significant community or ward-wide consultation on major strategy or policy issues will not occur, or if already commenced should be discontinued during the election period.

Public consultations required by Section 223 of the *Local Government Act 1989* or by the *Planning and Environment Act 1987* may need to occur during the election period.

## **7 Events and functions**

Councillors are able to continue to attend meetings, events and functions during the election period which are relevant to the Council and the community.

Council's annual program of events will continue during the election period however speeches will be limited to a short welcome, and should not contain any express or implied reference to the election. Any publicity will be mindful of the controls on electoral material outlined in these guidelines.



Councillors are able to attend events or functions conducted by external bodies during the election period, however when attending as a representative of Council, Councillors must be mindful that they do not use that opportunity to promote their election campaign.

## **8 Council resources**

Council will ensure that due propriety is observed in the use of all Council resources, and Council staff are required to exercise appropriate discretion in that regard. Council staff should avoid assisting Councillors in ways that could create a perception that they are being used for electoral purposes.

Staff, including support staff for the Mayor and Councillors, must not be asked to undertake any tasks connected directly or indirectly with an election campaign.

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 Coordinator Governance or the CEO.

### **8.1 Council resources**

Council resources, including officers, support staff, hospitality services, equipment (including mobile telephones, computers and any other technology), email addresses, and stationery should be used exclusively for normal Council business during the election period, and should not be used in connection with an election.

### **8.2 Correspondence**

Councillors will sign only the necessary minimum, if any, correspondence during the election period. Consistent with current standard practice, correspondence addressed to Councillors that relates to operational matters will be referred to the relevant Director for response.

Correspondence in respect to significant, sensitive or controversial matters, or to policy matters, should be signed by the CEO. Replies will be prepared in all cases to protect Council staff from any perception of political bias.

### **8.3 Expenses incurred by Councillors**

Payment or reimbursement of costs relating to Councillors' out-of-pocket expenses incurred during the election period should only apply to necessary costs that have been incurred in the performance of normal Council duties, not campaigning, and not for expenses that could be perceived as supporting or being connected with a candidate's election campaign. In the case of Councillor claims that cover a combination of Council and electoral business, the CEO will only approve a partial reimbursement to cover Council activities.

### **8.4 Council branding and stationery**

Council logos, letterheads, or other Council branding must not be used for, or linked in any way, to a candidate's election campaign.

### **8.5 Photographs and images**

Photographs and images taken by or provided by Council are not to be used by Councillors for the purpose of electioneering or in support of their election campaign.

This applies equally to images on the Council website that may be able to be copied.

### **8.7 Forums**

No local community forums, ward meetings or any other forums where matters affecting Council services, major projects, planning matters and issues with Shire-wide impacts will be held by Councillors during the election period.

## **9 Access to Council information**

All candidates have equal rights to access public information relevant to their election campaign from the Council administration. Neither Councillors nor candidates will be provided information or advice from Council staff that might be perceived to support and advise them during the election period.

### **9.1 Information and briefing material**

Information and briefing material prepared or secured by staff for a Councillor during the election period must be necessary to the carrying out of the Councillor's role and must not be related to election issues or to issues that might be perceived to be of an electoral nature.

### **9.2 Information requests from Councillors and candidates**

The Coordinator Governance will maintain an Information Request Register during the election period. This Register is a public document and will record all requests for information by Councillors or candidates, and the response given to those requests. Staff will be required to provide details of requests and responses to the Coordinator Governance for inclusion in the register.

Any enquiries by staff regarding information requests or briefing material perceived to be of an electoral nature or related to election issues will be referred by staff in the first instance to the Coordinator Governance for a determination. The *Submission to information request register form* (Attachment 2) is to be completed for this purpose.

## **10 Media and media services**

Council's media services are intended to promote Council activities or initiatives and must not be used in any way that might favour a candidate.

### **10.1 Media advice**

Any requests for media advice or assistance from Councillors during the election period will be channelled through the CEO or the Manager Communications. No media advice or assistance will be provided in relation to election issues or in regard to publicity that involves specific Councillors.

### **10.2 Media releases/spokespersons**

Media releases will not refer to specific Councillors. Where it is necessary to identify a spokesperson in relation to an issue the CEO or the Manager Communications will determine the appropriate person.

### **10.3 Publicity campaigns**

During the election period, publicity campaigns, other than for the purpose of conducting the election will be avoided wherever possible. Where a publicity campaign is deemed necessary for a Council activity, it must be approved by the CEO or Manager Communications. Council publicity during the election period will be restricted to communicating normal Council activities and initiatives.

### **10.4 Councillors**

Councillors will 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.

### **10.5 Council staff**

During the election period no Council staff members may make any public statement that relates to an election issue unless statements have been approved by the CEO or Manager Communications.

## **11 Equity in assistance to candidates**

All candidates for the Council election will be treated equally.

### **11.1 Candidate assistance and advice**

Any assistance and advice to be provided to candidates as part of the conduct of the Council election will be provided equally to all candidates. The types of assistance that are available will be documented and communicated to all candidates in advance.

### **11.2 Election process enquiries**

All election process related enquiries from candidates, whether sitting Councillors or not, will be directed to the Election Manager or, where the matter is outside the responsibilities of the Election Manager, to the Coordinator Governance.

### **11.3 Misuse of position**

Using Council resources for campaigning may be a criminal misuse of a Councillor's position under Section 76D of the *Local Government Act 1989*<sup>3</sup>. Serious penalties are prescribed for any Councillor who inappropriately makes use of their position or information obtained in the role of Councillor, to gain an advantage for themselves or for any other person.

## **12 Council staff member standing for election**

In accordance with section 34(2)(d) of the Act, a person is not qualified to be a Councillor if they are a member of Council staff of the Council. However, staff members are not prevented from nominating as a candidate (s.256(8)).

In the event that a member of Council's staff stands for election as a Councillor for the Macedon Ranges Shire, they are required to:

- take leave from their position to stand for election to the office of Councillor for the duration of the election period (with leave commencing, at the latest, from the time of nominating as a candidate);
- not perform any duties of their position for the duration of the election period; and
- if elected, resign from their position before taking the oath or affirmation of office.

## **13 Election signage**

The content of election signage must meet the requirements for electoral material under section 291 of the Act. Council provides guidance in relation to the rules which apply to signage that promotes candidates in an election, or relates to election issues.

### **13.1 Election signs on private land**

Election signs are allowed to be displayed on private land without a permit with permission from the owner of the land, subject to the following restrictions which are set out in clause 52.05-10 of the Macedon Ranges Planning Scheme:

- the advertisement area of the sign must not exceed 5 square metres
- only one sign may be displayed on the land
- the sign must not be animated or internally illuminated, and it must not be displayed longer than 14 days after the event is held or 3 months without a permit. (whichever is sooner).

### **13.2 Election signs on public land and roads**

The placement of election signs on land that is owned or managed by Council (including recreation reserves, halls, facilities, nature strips, median strips, and road reserves) is prohibited. The erection of such signs will be dealt with as a breach of the Council's General Purposes and Amenity Local Law No.10.

In relation to roads and road infrastructure, penalties may also apply under section 66 of the *Road Management Act 2004*, which outlines the controls on advertising, signs and bills on roads and road infrastructure.

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<sup>3</sup> This provision of the *Local Government Act 1989* remains in force until it is repealed on 24 October 2020.

### **13.3 Election signs on vehicles and trailers**

Portable or moveable election signs that are attached to a vehicle, trailer or similar may only be displayed if a permit is granted in accordance with Council's General Purposes and Amenity Law Local Law No. 10 and provided that:

- the sign does not unreasonably restrict the use of the road, or endanger the safety of members of the public
- the relevant parking restrictions and requirements are observed.

## **14 Notification and distribution of policy**

A copy of this policy will:

- be given to each Councillor as soon as possible after it is adopted
- be available for inspection by the public at the Council Customer Service Centres
- be published on Council's website.

Additionally, as soon as possible and no later than 30 days prior to the commencement of the election period, the CEO will ensure that all staff are informed of the requirements of this policy.

## **15 Suspension of matters during election period**

In accordance with the Act<sup>4</sup>, any applications made, or proceedings before a Councillor Conduct Panel or the Victorian Civil and Administrative Tribunal regarding the misconduct or serious misconduct of a person who is a Councillor, must be suspended during the election period.

If an application is made to a Councillor Conduct Panel for a finding of serious misconduct against a person who is a Councillor before a general election, and that person is not returned to the office of Councillor as a result of the general election, the application made against that person who was a Councillor before the election lapses.

If an application is made to a Councillor Conduct Panel for a finding of serious misconduct against a person who is a Councillor before a general election, and that person is returned to the office of Councillor as a result of the general election, the application made against the Councillor may resume, whether or not any applicant was returned to the office of Councillor as a result of the general election.

## **16 Monitoring, enforcement and amendment**

The implementation of this policy shall be overseen by the Coordinator Governance.

Breaches of the policy shall be brought to the attention of the CEO without delay. Breaches of the policy sufficient to constitute a breach of the Act shall be referred to the Local Government Inspectorate.

The CEO has the discretion to introduce additional provisions to this policy where they believe the new provisions are necessary to support the achievement of its stated policy objectives.

Any changes made by the CEO will be reflected in an update to this policy and published on Council's website and a notification of this change will be sent to all Councillors and candidates.

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<sup>4</sup> This clause is to be read in accordance with section 81N of the *Local Government Act 1989* until the repeal of this provision on 24 October 2020; thereafter it is to be read in accordance with section 173 of the *Local Government Act 2020*.

# Request for approval of publication during the election period

## 1 Author to complete

<b>Document description (<i>attach document</i>):</b>	
<b>Intended distribution channel:</b>	

I declare that this material contained in the attached document has been checked by me and to the best of my knowledge does not contain any electoral matter.

<b>Name and title:</b>	
<b>Signature:</b>	
<b>Date:</b>	

## 2 Coordinator Governance (or delegate) to complete

- I have reviewed the material contained in the attached document and have returned the document to the author as I am of the view it contains electoral matter.
- I have reviewed the material contained in the attached document and can advise that to the best of my knowledge it does not contain any electoral matter.

<b>Name and title:</b>	
<b>Signature:</b>	
<b>Date:</b>	

## 3 CEO to complete

- I have reviewed the material contained in the attached document and do not approve that it be printed, published or distributed during the election period on behalf of Macedon Ranges Shire Council.
- I approve that the attached advertisement, handbill, pamphlet or notice may be printed, published or distributed during the election period on behalf of Macedon Ranges Shire Council.

<b>Name and title:</b>	Chief Executive Officer
<b>Signature:</b>	
<b>Date:</b>	

## Submission to information request register form

**1** Council officer to complete

**Name of Councillor or candidate making the request:**

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**Date of request:**

--

**Information requested (*attach documents if required*):**

--

**Was information provided?**

Yes

No (if no, go to 2)

**Date information provided:**

--

**Information provided (*attach documents if required*):**

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**2** Submit to Coordinator Governance (or delegate) within 24 hours

**3** Coordinator Governance (or delegate) to place on register