

<b>Title:</b>	<b>Election Caretaker Period Policy</b>
<b>Type:</b>	<b>Council</b>
<b>Adopted:</b>	27 November 2019
<b>File No:</b>	19/78518
<b>Attachments:</b>	

### 1. Purpose

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 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.

### 2. Rationale

The Election Caretaker Period Policy ("the Policy") has been developed in order to ensure that the general elections for the Murrindindi Shire Council are conducted in a manner that is ethical, fair and equitable, and are publicly perceived as such. The Policy will also facilitate the continuation of the ordinary business of local government in the Murrindindi Shire throughout the caretaker period in a responsible and transparent manner, in accordance with statutory requirements and established 'caretaker' conventions. This Policy also commits Council during the caretaker 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. Scope

The Election Caretaker Policy applies to any Councillor of the Murrindindi Shire Council, members of special committees of Council and all members of the Murrindindi Shire Council staff.

Specifically, this policy must be complied with during the caretaker period if ANY of the following apply to you:

- You are involved in making a major policy decision;
- You are involved in making a significant decision that will bind the incoming Council;
- You are about to publish 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;
- You are involved in the creation of any Council publication;
- You are involved in any public consultation process;
- You are a Councillor who is planning to attend a function or event;
- You supply resource support to Councillors;
- You are a Councillor requesting access to Council information; or
- You are a Councillor requesting media advice or services.

### 4. Definitions

Reference Term	Definition
<i>Caretaker period</i>	Has the same meaning as 'election period' in <i>section 3(1)</i> of the Act, and

	means the period that starts on the entitlement date and ends at 6pm on Election Day.
<i>Publication</i>	Includes any means of publication including letters and information on the Internet.
<i>Public Consultation</i>	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.
<i>Significant Decision</i>	Means an irrevocable decision that significantly affects the municipality.

## 5. Policy

### 5.1 Major Policy Decisions

Section 93A of the Act prohibits the making of “Major Policy Decisions” **during the caretaker period**. Any major policy decision made during the caretaker period is deemed to be invalid under the Act.

In the context of this Policy, a “**major policy**” decision as defined in *section 93A (6)* of the Act means any 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 of which exceeds circa \$150,000; 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 \$150,000.

### 5.2 Significant Decisions

During the caretaker period, Council will avoid making decisions that significantly affect the municipality and unreasonably bind the incoming Council. Examples of significant decisions of Council include the adoption of any Council strategies, policies that would bind any incoming Council to the outcomes included.

### 5.3 Public Consultation

Council will avoid any public consultation processes during the caretaker period unless absolutely critical to facilitate the day to day business of Council. This will include the facilitation of any project reference groups or advisory committees during the caretaker period. Any such public consultations will avoid express or implicit links to the election.

The Chief Executive Officer reserves the right to postpone any matter if the issue is likely to affect voting. Council will not conduct public consultation on any contentious or politically sensitive matter after the commencement of the caretaker period.

These requirements do not apply to public consultation required under the *Planning and Environment Act 1987*, or matters subject to *Section 223* of the Act.

### 5.4 Council Resources

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

Sitting Councillors may continue to use any Council equipment provided to them to facilitate their performance of normal Council duties, subject to adherence to the Councillor Code of Conduct.

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Councillors standing for re-election must not use any Council equipment as a resource to assist with their election campaigns.

No Council logos, letterheads, contact details (mobile phone or email details) or other corporate branding may be used for, or linked in any way to, a candidate's election campaign.

Reimbursements of Councillors' out-of-pocket expenses during the caretaker 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.

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. 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 for review.

No election material or active campaigning is to be conducted at a Council sponsored event.

No election material or active campaigning is to be displayed in any Council building.

Council will also ensure that other Murrindindi Shire Council resources are not used inappropriately in ways that may influence voting in an election or provide an undue advantage for a candidate. This includes financial, human and material resources, such as:

- (a) Council staff will not undertake an activity that may affect voting in the election;
- (b) Council staff will not authorise, use or allocate a Council resource for any purpose that may influence voting in the election; and
- (c) Council staff who feel they are being placed in a compromising situation by a request from a Councillor shall refer the Councillor to the Chief Executive Officer for clarification on their request.

### **5.5 Council Publications**

Council will avoid producing any publications, advertisements or public notices unless crucial to the operations of Council or required for statutory compliance.

*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.

Publications to be printed, published or distributed during the caretaker 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: *'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 on Council records.

Publications which require certification include:

- Brochures, pamphlets, handbills, flyers, magazines and books;
- Reports (other than agenda papers and minutes in discussed further below);
- Advertisements and notices, except newspaper notices of meetings;
- New website material;
- Social media publications (which includes Facebook 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;

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- Media releases;
- Material to publicise a function or event; and
- Any publication or distribution of Councillors' speeches.

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. Items submitted for Public Participation Time will be reviewed to ensure that they comply with the principles of the Act and this policy, and may be amended accordingly before publication, or excluded from the agenda if necessary.

Material that was published on Council's website in advance of the caretaker 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 caretaker period. Councillor contact information will remain available on the website during the caretaker period, but Councillors' profiles will be removed. Any material published on Council's website during the caretaker period must be certified by the Chief Executive Officer.

Council is required by the Local Government Act to produce and put on public display a copy of its Annual Report. The 2019/20 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. 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.

### **5.6 Events & Media Services**

Council's Communications unit 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 subject to certification by the Chief Executive Officer.

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 referenced. Media releases will require certification by the Chief Executive Officer as per Section 5.5.

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.

### **5.7 Assistance to Candidates**

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.

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 provided will be documented and communicated to all candidates in advance.

Candidates will also be informed of the requirements to complete and submit an 'Election Campaign Return' to the Chief Executive Officer within 60 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.

### **5.8 Governance**

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

Council's Governance unit will maintain an Information Request Register during the caretaker period. This Register will be a public document that records all requests relating to electoral matters and non-routine requests for information by Councillors and candidates, and the responses given to those requests.

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.

### **6. Related Policies, Strategies and Legislation**

Councillor Code of Conduct  
Employee Code of Conduct

### **7. Council Plan**

This Policy is consistent with the Council Plan 2017-2021 Our Promise strategic objective to work in collaboration with our communities to deliver the best possible outcomes in all that we do.

### **8. Management and Review**

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 and Officers are informed of the application of this policy upon adoption and again 30 days prior to the commencement of the caretaker period;
- Matters of Council business requiring major policy or significant decisions are scheduled for Council to enable resolution prior to the commencement of the caretaker period, or deferred where appropriate for determination by the incoming Council; and
- Appropriate guidelines and instructions are provided to Council staff on their roles and responsibilities with relation to the implementation of this policy.

This policy must be reviewed in line with Section 93B of the *Local Government Act 1989* prior to the 2024 General Election.

### **9. Consultation**

This policy was prepared in consultation with other Councils and best practice guidelines provided by the Victorian Electoral Commission, Local Government Victoria and the Municipal Association of Victoria.

Community consultation is not required for the adoption of this policy.

### **10. Human Rights Charter**

This policy has been developed with consideration of the requirements under the Charter of Human Rights and Responsibilities.