



Election Period Policy

2019

DRAFT

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Purpose

Section 93B of the Victorian *Local Government Act 1989* (the Act) requires Local Government Authorities to adopt an 'Election Period Policy'. This policy will ensure the General Municipal Election is conducted in an environment that is open and fair to all candidates by setting out procedures and practices to be followed during the pre-election period.

In the lead up to a Council General Election, otherwise known as the 'Election Period', provisions apply to the Local Government sector to ensure that the election process remains free from inappropriate electioneering by existing Councillors, and to safeguard the authority of the incoming Council.

Specific provisions are incorporated into the Act that prohibit Councils from making major policy decisions or publishing or distributing electoral matter during an Election Period. These provisions are intended to assist Councillors and officers to continue to conduct ordinary matters of administration that need to be addressed in the lead up to an election, while maintaining public confidence in an unbiased election process.

East Gippsland Shire Council is committed to the principle of fair and democratic elections and has adopted the practices detailed within this policy to guide the conduct of Councillors and officers throughout the election process.

This policy applies during the 'Election Period' (see 'Definitions' for explanation) and covers:

- Decisions made by Council, Special Committees of Council, or Council delegates;
- Any material that is published by East Gippsland Shire Council;
- Attendance and participation in functions and events;
- Use of Council resources;
- Access to Council information; and
- Media services.

This policy will affect you during the Election Period if you are:

- involved in making a major policy decision;
- involved in making a significant decision that may bind the incoming Council;
- intending to publish any written or electronic material that refers to a candidate (including any current Councillor); or the municipal election; or an issue before the voters in connection with the election; or could be seen to advantage or disadvantage any candidate for election.
- involved in the creation of any Council publication;
- involved in the planning and/or organisation of any public consultation process;
- involved in the planning and/or organisation of any public Council function or event;
- asked to supply resources, support or information to Councillors;
- a Councillor who is standing for re-election.

Scope

This policy applies to all current Councillors, all candidates to the General Election, the Chief Executive Officer and all Council officers.

Election Period Policy 2019

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Policy Context

1.1 Council Decisions

Council will not make any decision that significantly affects the municipality and will unreasonably bind the incoming Council. This includes decisions at Council Meetings, decisions by Special Committees or decisions by Council officers as delegates.

Section 93A of the *Local Government Act* 1989 (the Act) prohibits a Council from making major policy decisions during the Election Period. Section 93B prohibits Council from making inappropriate decisions.

In accordance with the Act, Council will not make **major decisions** during the Election Period relative to:

- the remuneration, appointment or dismissal of a Chief Executive Officer;
- entering into any contracts worth more than 1% of the Council's revenue from rates and charges levied under section 158 of the Act in the previous financial year; and
- the exercise of any entrepreneurial power under section 193 of the Act if the amount assessed under section 193(5A) in respect of the proposal exceeds whichever is greater of \$100,000 or 1% of the Council's revenue from rates and charges levied under section 158 of the Act in the previous financial year.

Council will not make **inappropriate decisions**, which are defined under the Act as decisions that would affect voting in an election or could reasonably be made after the election.

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

During the Election Period Council will not make **significant decisions**, i.e. decisions that may:

- have a significant effect on the municipality or the community;
- commit the Council to substantial expenditure or major actions; and/or
- otherwise unreasonably bind the incoming Council.

Election Period Statement – Council Decisions

During the Election Period the Chief Executive Officer will ensure that an “election period statement” is included in every report submitted to a Council Meeting or Special Council Meeting for decision.

Council will not make a decision on any matter or report that does not include a statement. This will ensure that no agenda item is included that could potentially influence voters’ intentions or encourage Councillor candidates to use the item as part of their electioneering campaign.

Unless the report recommends that a Ministerial exemption be sought, the election period statement will be one of the following:

- *“The recommended decision is not a “major policy decision” as defined in section 93A of the Local Government Act 1989, or a “significant decision” as defined by Council’s Election Period Policy.”*

or

- *“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 Council’s Election Period Policy but an exception should be made for the following reasons: [insert reasons].”*

Examples of other decisions that should be avoided during the Election Period include, but are not limited to:

- allocation of community grants or other direct funding to community organisations;
- allocation of funds from the Capital Quick Response Fund;
- major planning scheme amendments; and
- changes to strategic objectives and strategies in the Council Plan.

1.2 Council Resources

It is an established democratic principle that public resources must not be used in a way that would influence the way people vote in elections.

It is also an offence under section 76D of the Act for a Councillor to misuse his or her position to gain or attempt to gain an advantage for themselves or others, or to cause or attempt to cause detriment to anyone. The penalty for misuse of position by a Councillor is 600 penalty units, or imprisonment for five years, or both.

While East Gippsland Shire Council is committed to this principle, it is also important that Councillors continue to have access to the resources they need to fulfil their elected roles until the end of their term of office.

The following arrangements will apply during the election period:

- Council resources, including offices, support staff, hospitality, equipment, email, mobile phones and stationery will be used exclusively for normal Council business and will not be used in connection with election campaigning.
- 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 could be perceived as supporting or being connected with any candidate's election campaign.
- Council logos, letterhead, or other Council branding must not be used for, or linked in any way to any candidate's election campaign.
- Council owned photographs/images will not be used for any candidate's electioneering purposes.
- Council support staff will not be asked or permitted to undertake any tasks connected with any candidate's election campaign.

Where it is impractical for Councillors to discontinue their use of Council funded services/equipment (e.g. mobile phones, computers, vehicles, etc.) Councillors will reimburse East Gippsland Shire Council for any election campaign-related usage of these services during the Election Period. Councillors may wish to keep logbooks for this purpose and these will be provided on request.

Councillors will not use their Council-supplied email account for election campaigning for themselves or any other candidate.

1.3 Council Communications and Publicity

Council communications are a legitimate way to promote Council activities and services. It is important that all Councillors have access to the Council's communication resources to enable them to fulfil their roles. However, they will not be developed or used in any way that might influence the outcome of a Council election.

Section 55D of the Act prevents Council from releasing pamphlets, notices, advertisements etc. without a written declaration being included from the Chief Executive Officer (CEO) certifying that the item does not contain electioneering material.

Interpretation of section 55D is extremely broad. For the purposes of this Policy, it has been interpreted as referring to any mechanism or means employed by Council to communicate with the community.

In respect of print and electronic media, during the defined Election Period:

- Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer. This power to approve cannot be delegated to another staff member.

No publication or communication during the election period may be printed, published or distributed unless the following certification – over the Chief Executive Officer's signature – has been applied to the material:

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

Although the certification does not need to be printed on published versions, copies of all certifications and certified material must be retained on Council records.

Any publications that cannot be scheduled for before or after the Election Period, whether by Council or anyone acting on behalf of Council, must be 'certified' by the Chief Executive Officer as not containing electoral material – this includes bulk letters/emails and newsletters issued during the Election Period.

- Council publicity and communications will be restricted to promoting normal Council activities and services, and for informing residents about the conduct of the election.
- General correspondence addressed to Councillors will be managed in accordance with normal protocols. However, Councillors will sign only the necessary minimum of correspondence during the Election Period, and correspondence regarding significant, sensitive or controversial matters should be signed by the CEO. Responses will be prepared without political bias.
- Media releases will not mention or quote any Councillor(s) during the Election Period.
- Council employees must not make any public statement that could be construed as influencing the election. Statements of clarification may be required from time to time and these are to be approved by the Chief Executive Officer.
- In the event that a spokesperson is required in relation to any publication or communication, the Chief Executive Officer will fulfil that role or nominate an appropriate officer to act as spokesperson.
- No media advice or assistance will be provided to Councillors in relation to election campaign matters.
- 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 any candidate's election campaign.
- Council is required by the *Local Government Act 1989* to produce an Annual Report, which will be published during the Election Period. The Annual Report does not require certification. However, it will not contain any material that could be regarded as electioneering or promotion of individual Councillors. Councillor images will be kept to a minimum, and achievements of individual Councillors will not be included. A Special Council Meeting will be conducted at an appropriate time during the Election Period to finalise the Annual Report process in accordance with the provisions of the *Local Government Act 1989*.

1.4 Social Media and Website

Council's website and social media sites such as Facebook, Twitter, YouTube, Linked In and blogs may continue to be a corporate voice for Council, and will not be used for any electioneering purposes by Councillors or Council officers.

Councillor profiles on the Council website will be limited to a name, portfolio title and contact details. Photographs and profiles will be removed.

Individual Councillors and/or achievements, or any material considered campaign material, will not be published on any of Council's websites.

During the Election Period a statement will be posted on all Council websites and social media sites informing the general public that posting a notice during the Election Period cannot be responded to, or published, should the posting be political in nature.

Council's social media sites will be monitored for electioneering material and any inappropriate posts will be removed as soon as practicable.

No new pages, documents or posts will be uploaded to any East Gippsland Shire Council social media platform during the Election Period without prior written certification by the Chief Executive Officer.

1.5 Functions and Events / Speeches

Wherever practicable, civic events and functions will not be conducted during the Election Period.

Where this is not possible, during the Election Period these will relate only to legitimate Council business and will not be used, or be capable of being seen as being used, to promote the campaign of any candidate.

All speeches prepared for use at events or functions will be reviewed by the Manager Customer Experience and Communication or another officer nominated by the Chief Executive Officer, to ensure the content does not breach this Policy or the Act.

Where required and consistent with normal practice, a Councillor may make a speech during an event or function. However, the speech must be approved by the Chief Executive Officer in advance and delivered as written. Speeches will not have any political reference that may be construed as providing any candidate with an advantage.

Council officers may conduct or assist with Council Election information sessions.

1.6 Provision of Information

Council recognises that all election candidates have certain rights to information from the Council administration subject to the *Privacy and Data Protection Act 2014* (Vic) which restricts disclosure of certain information.

It is important that current Councillors continue to receive information that is necessary to fulfil their roles. However, Councillors must not request or receive information or advice from

Council officers to support election campaigns, and there shall be complete transparency in the provision of all information and advice during the Election Period.

Request for Information Register

During the Election Period a “Request for Information Register” will be maintained by the Office of the Chief Executive Officer. This register will be available for inspection by the public and will record all requests relating to electoral matters, and non-routine requests for information by Councillors and election candidates, as well as the responses provided.

1.7 Advice to Candidates

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

All election related enquiries from candidates, whether current Councillors or not, will be directed to the Victorian Electoral Commission Returning Officer, or where the matter is outside the responsibilities of the Returning Officer, to the Chief Executive Officer or General Manager Business Excellence (or nominee).

1.8 Public Consultation

For the purposes of this Policy, public consultation is any process that involves inviting individuals, groups or organisations or the community generally to comment on an issue or proposed action or proposed policy. It includes discussion of those matters with members of the public.

Wherever possible, public consultations will be avoided during the Election Period.

Where public consultation during the Election Period is essential to maintain the normal day to day business of Council, it may be undertaken only with prior written approval by the responsible General Manager.

The Bang the Table community engagement website – <http://yoursay.eastgippsland.vic.gov.au/your-say> will be disabled for the duration of the election period.

Facilitators of any consultation held during the Election Period must be able to justify to the community the special circumstances making the session necessary and how the risks of influencing the election will be mitigated or prevented to avoid potential electioneering.

In view of the potential for a matter or issue to become contentious or politically sensitive in the course of the Election Period, Council reserves the right to postpone a matter if the issue is likely to affect voting. Council will not continue or commence consultation on any contentious or politically sensitive matter during the Election Period.

No Council advisory board or consultative committee meetings will be held during the Election Period unless exceptional circumstances apply and the Chief Executive Officer has approved the meeting.

1.9 Travel/Accommodation and Professional Development

Councillors will not participate in any interstate or overseas travel during the Election Period in their capacity as a Councillor.

In circumstances where it is imperative that the Mayor (or nominee) represent the organisation on a delegation or forum Council may, by resolution, approve such attendance. If consideration by Council is impractical, the Chief Executive Officer may determine the issue.

Allocations of budget for Councillor seminars/training and attendance at events directly relevant to their work as a Councillor will be allocated on a pro-rata basis between the commencement of the relevant financial year and the election date. This will ensure incoming Councillors receive a fair allocation of the budget allocated for this purpose.

No new professional development opportunities will be undertaken or commenced by Councillors during the Election Period.

1.10 Councillor Expenditure

Claims for the reimbursement of expenses may continue to be lodged by Councillors, provided they conform to the requirements set out in the Councillors Support and Expenses Policy and this Policy.

NOTE:

This Policy is intended to supplement rather than reproduce Council's legislative requirements, and to guide rather than replace a common-sense approach to fair and equitable Council elections.

The Policy is not intended as a substitute for legal advice and individuals should seek their own independent advice if they are unsure about any aspect of the *Local Government Act* 1989 and associated regulations in relation to the Election Period.

Policy Statement

This Policy establishes a series of practices to ensure that actions of the current Council do not bind an incoming Council and limit its freedom of action.

The provisions operate during the 'Election Period', which commences at midnight 32 days prior to the designated Election Day. The Election Period will conclude at 6.00 pm on Election Day.

Roles and Responsibilities

These management positions are responsible for implementation and compliance monitoring of the policy in their work areas:

Party / Parties	Roles and Responsibilities
Chief Executive Officer	Ensure that scheduling of significant policy or strategy decisions is made well in advance of the Election Period or deferred for consideration by the incoming Council. Certify that any published material does not contain electoral matter. Ensure the 'Election Period' is included on Council Reports where applicable.
General Manager Business Excellence	Policy owner. Ensure all Councillors and staff are informed of the requirements of this policy. Provide advice and guidance on the implementation of the policy. Ensure that a copy of this policy is given to each Councillor as soon as practicable after it is adopted; available for inspection by the public at all Council Business, Service and Outreach Centres; and published on Council's website.
Responsible Managers General	Approve in writing, any public consultation that is considered essential to maintain the normal day to day business of Council and must be conducted during the Election Period.
Manager Experience Communications Customer and	Review all speeches to be delivered by Councillors at Council approved events during the Election Period. Implement an appropriate process to ensure that no material covered by section 55D of the Act is published without CEO certification.
Executive Leadership Team	Provide support and guidance to staff with implementing this policy.
Office of the CEO	Maintain the Request for Information Register and ensure it is available for public inspection on request.
Governance and Compliance Unit	Assist with any day to day queries with respect to the implementation of this policy.
All Councillors and staff	Adhere to the guiding principles as outlined in this policy.

All staff have an obligation to report occurrences of non-compliance with Council policy. Incidents of non-compliance should be reported immediately to the Policy owner or the Governance Unit.

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Where non-compliance has been identified the matter will be investigated by internal review and where applicable further action taken in accordance with Council's Disciplinary Procedures Policy.

References and Supporting Documents

Council Plan 2017-2021 goal 4.1 is to ensure:

"East Gippsland Shire Council is inclusive, engaged and open.."

Applicable Legislation:

- *Local Government Act 1989*
- *Local Government (Electoral) Regulations 2005*
- *Local Government Amendment (Improved Governance) Act 2015*

Other:

- Councillor Code of Conduct
- Councillors Support and Expenses Policy
- East Gippsland Shire Council Staff Code of Conduct

Supporting Procedures and Guidelines

Relevant extracts of the *Local Government Act 1989* are provided at **Attachment 1**.

Privacy and Human Rights Consideration

All personal information collected by East Gippsland Shire Council in connection with this policy will be handled in accordance with all applicable privacy legislation and will be used only for the purpose of compliance with the Act. Personal information about an individual held by Council must only be used to carry out the primary or directly related purpose of collection. Furthermore, Council must not collect personal information unless the information is necessary for one or more of its functions.

Individuals have the right to make a complaint to the Victorian Commissioner for Privacy and Data Protection if they believe their privacy has been breached.

The Election Period Policy has been assessed as compliant with the obligations and objectives of the Victorian Charter of the *Human Rights Responsibilities Act 2006*.

Definitions

Term	Meaning / Responsibility
<i>Certification by CEO</i>	The certification by the Chief Executive Officer that material for publication or distribution does not contain electoral matter as defined under section 55D of the Act.
<i>Council Officers</i>	Members of East Gippsland Shire Council staff
<i>Election Period</i>	Section 3(1) of the Act defines the Election Period to be the 32-day period that starts at midnight on the last day of nominations and ends at 6.00 pm on Election Day.
<i>Election Period statement</i>	Statement published on all reports submitted to a Council Meeting or a Special Council Meeting for decision by the Chief Executive Officer.
<i>Electoral matter</i>	<p>Defined in the Act as any matter that is intended or likely to affect voting in the election. Material that contains an express or implicit reference to or comment on:</p> <ul style="list-style-type: none"> • the election • a candidate in the election • an issue submitted to or otherwise before the voters in connection with the election (or issues of considerable public contention) • any other material that is likely to affect voting at the election. <p>Electoral matter includes material which;</p> <ul style="list-style-type: none"> • 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 <p>Publicises the achievements of the elected Council.</p>
<i>Inappropriate decision</i>	<p>A decision made by a Council during an Election Period including any of the following—</p> <p>(a) decisions that would affect voting in an election;</p> <p>(b) decisions that could reasonably be made after the election.</p>

Term	Meaning / Responsibility
Major policy decision	<p>Defined in the Act as being a decision:</p> <ul style="list-style-type: none"> • In relation to the employment, remuneration or termination of the CEO (other than a decision to appoint an acting CEO) • To enter a contract the total value of which exceeds either \$100,000 or 1% of council revenue from rates in the preceding financial year (whichever is the greater) <p>To exercise any power under section 193 if the sum assessed exceeds either \$100,000 or 1% of council revenue from rates for the preceding financial year (whichever is the greater).</p>
Publication	A broad interpretation should be used to include all documents that are produced for the purpose of communicating with people in the community, including newsletters, advertisements and notices, media releases, leaflets and brochures, emails and mailouts to multiple addresses, electronic information and web based productions including Council's website and social media pages.
Publish	Means publish by any means including by publication on the Internet.
Significant decisions	Include irrevocable decisions that commit the council to substantial expenditure or major actions; or decisions that will have a major impact on the municipality or the community and will unreasonably bind the incoming Council.
The Policy	Election Period Policy

Revision History and Review

Version Control	Approved Amended Rescinded	Date Effective	Approved By	ECM Document Reference	Summary of Changes
1	Approved	07/08/2012	Council	4897306	
2	Approved	09/04/2013	Council	5167063	Redraft into new template format
3	Approved	01/03/2016	Council	6647876	Merge Policy and Procedure into one Policy document
4	Approved	21/11/2017	Council	7336118	Amended to make dates/times/content generic rather than specific to the timeframes of the previous election
5	Draft		Council		Redraft into new template format, update position titles

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ATTACHMENT 1 - Extracts *Local Government Act 1989*

Section 3(1) of the Act defines the election period to be the 32-day period that starts at midnight on the last day of nominations and ends at 6.00 pm on Election Day.

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

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

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

- The employment or remuneration of the CEO.
- Contracts exceeding specified values.
- Entrepreneurial ventures exceeding specified values.
- Major policy decisions.
- Significant decisions.
- Decisions which unreasonably commit the incoming Council.

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.

76B Primary principle of Councillor Conduct

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

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

76BA General Councillor Conduct principles

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

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

76C Councillor Code of Conduct

- (1) A Council must develop and approve a Councillor Code of Conduct for the Council within 12 months after the commencement of section 15 of the *Local Government Amendment (Councillor Conduct and Other Matters) Act 2008*.
- (2) A Council must review the Councillor Code of Conduct within the period of 12 months after a general election.
- (3) A Councillor Code of Conduct-
 - (a) must include the Councillor conduct principles;
 - (b) may set out processes for the purpose of resolving an internal dispute between Councillors;

* * * * *

 - (c) must include provisions in respect of any matter prescribed for the purpose of this section;
 - (d) may include any other matters relating to the conduct of Councillors which the Council considers appropriate.
- (4) A Councillor Code of Conduct must not be inconsistent with any Act or regulation.
- (5) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act or regulation.

- (6) A copy of the current Councillor Code of Conduct must be-
 - (a) given to each Councillor;
 - (b) available for inspection by the public at the Council office and any district offices.
- (7) On and from the commencement of section 15 of the *Local Government Amendment (Councillor Conduct and Other Matters) Act 2008*, a Councillor Code of Conduct is taken to include the Councillor conduct principles.

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.

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.

77 Confidential information

- (1) A person who is, or has been, a Councillor or a member of a special committee, must not release information that the person knows, or should reasonably know, is confidential information.
- (2)

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 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.

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.

Version number: 5
Authorised by: General Manager Business Excellence



~~Municipal~~ Election Period ~~Caretaker~~ Policy 20179

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Purpose

Section 93B of the Victorian *Local Government Act 1989* (the Act) requires Local Government Authorities to adopt an 'Election Period Policy'. This policy will ensure the General Municipal Election is conducted in an environment that is open and fair to all candidates by setting out procedures and practices to be followed during the pre-election ~~'caretaker'~~ period.

In the lead up to a Council General Election, otherwise known as the 'Election Period', ~~caretaker~~ provisions ~~and established conventions~~ apply to the Local Government sector to ensure that the election process remains free from inappropriate electioneering by existing Councillors, and to safeguard the authority of the incoming Council.

Specific provisions are incorporated into the Act that prohibit Councils from making major policy decisions, or publishing or distributing electoral matter during an Election Period. These ~~'caretaker~~ provisions', ~~along with recognised conventions,~~ are intended to assist Councillors and officers to continue to conduct ordinary matters of administration that need to be addressed in the lead up to an election, while maintaining public confidence in an unbiased election process.

East Gippsland Shire Council is committed to the principle of fair and democratic elections, and has adopted the practices detailed within this policy to guide the conduct of Councillors and officers throughout the election process.

This policy applies during the 'Election Period' (see 'Definitions' for explanation) and covers:

- Decisions made by Council, Special Committees of Council, or Council delegates;
- Any material that is published by East Gippsland Shire Council;
- Attendance and participation in functions and events;
- Use of Council resources;
- Access to Council information; and
- Media services.

This policy will affect you during the Election Period if you are:

- involved in making a major policy decision;
- involved in making a significant decision that may bind the incoming Council;
- intending to publish any written or electronic material that refers to a candidate (including any current Councillor); or the municipal election; or an issue before the voters in connection with the election; or could be seen to advantage or disadvantage any candidate for election.
- involved in the creation of any Council publication;
- involved in the planning and/or organisation of any public consultation process;
- involved in the planning and/or organisation of any public Council function or event;
- asked to supply resources, support or information to Councillors;
- a Councillor who is standing for re-election.

~~Municipal~~ Election Period Policy 2017~~9~~

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Scope

This policy applies to all current Councillors, all candidates to the General Election, the Chief Executive Officer and all Council officers.

Policy Context

1.1 Council Decisions

Council will not make any decision that significantly affects the municipality and will unreasonably bind the incoming Council. This includes decisions at Council Meetings, decisions by Special Committees or decisions by Council officers as delegates.

Section 93A of the *Local Government Act* 1989 (the Act) prohibits a Council from making major policy decisions during the Election Period. Section 93B prohibits Council from making inappropriate decisions.

In accordance with the Act, Council will not make **major decisions** during the Election Period relative to:

- the remuneration, appointment or dismissal of a Chief Executive Officer;
- entering into any contracts worth more than 1% of the Council's revenue from rates and charges levied under section 158 of the Act in the previous financial year; and
- the exercise of any entrepreneurial power under section 193 of the Act if the amount assessed under section 193(5A) in respect of the proposal exceeds exceeds-which-ever is greater of \$100,000 or 1% of the Council's revenue from rates and charges levied under section 158 of the Act in the previous financial year.

Council will not make **inappropriate decisions**, which are defined under the Act as decisions that would affect voting in an election or could reasonably be made after the election.

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

During the Election Period Council will not make **significant decisions**, i.e. decisions that may:

- have a significant effect on the municipality or the community;
- commit the Council to substantial expenditure or major actions; and/or
- otherwise unreasonably bind the incoming Council.

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Election Period~~Caretaker~~ Statement – Council Decisions

During the Election Period the Chief Executive Officer will ensure that an “election period~~caretaker~~ statement” is included in every report submitted to a Council Meeting or Special Council Meeting for decision.

Council will not make a decision on any matter or report that does not include a ~~caretaker~~ statement. This will ensure that no agenda item is included that could potentially influence voters’ intentions, or encourage Councillor candidates to use the item as part of their electioneering campaign.

Unless the report recommends that a Ministerial exemption be sought, the election period~~caretaker~~ statement will be one of the following:

- *“The recommended decision is not a “major policy decision” as defined in section 93A of the Local Government Act 1989, or a “significant decision” as defined by Council’s Municipal Election Period ~~Caretaker~~ Policy.”*

or

- *“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 Council’s Municipal Election Period ~~Caretaker~~ Policy but an exception should be made for the following reasons: [insert reasons].”*

Examples of other decisions that should be avoided during the Election Period include, but are not limited to:

- allocation of community grants or other direct funding to community organisations;
- allocation of funds from the Capital Quick Response~~Discretionary~~ Fund;
- major planning scheme amendments; and
- changes to strategic objectives and strategies in the Council Plan.

1.2 Council Resources

It is an established democratic principle that public resources must not be used in a way that would influence the way people vote in elections.

It is also an offence under section 76D of the Act for a Councillor to misuse his or her position to gain or attempt to gain an advantage for themselves or others, or to cause or attempt to cause detriment to anyone. The penalty for misuse of position by a Councillor is 600 penalty units, or imprisonment for five years, or both.

~~Municipal~~ Election Period Policy 2017⁷⁹

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While East Gippsland Shire Council is committed to this principle, it is also important that Councillors continue to have access to the resources they need to fulfil their elected roles until the end of their term of office.

The following arrangements will apply during the election period:

- Council resources, including offices, support staff, hospitality, equipment, email, mobile phones and stationery will be used exclusively for normal Council business and will not be used in connection with election campaigning.
- 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 could be perceived as supporting or being connected with any candidate's election campaign.
- Council logos, letterhead, or other Council branding must not be used for, or linked in any way to any candidate's election campaign.
- Council owned photographs/images will not be used for any candidate's electioneering purposes.
- Council support staff will not be asked or permitted to undertake any tasks connected with any candidate's election campaign.

Where it is impractical for Councillors to discontinue their use of Council funded services/equipment (e.g. mobile phones, computers, vehicles, etc.) Councillors will reimburse East Gippsland Shire Council for any election campaign-related usage of these services during the Election Period. Councillors may wish to keep logbooks for this purpose and these will be provided on request.

Councillors will not use their Council-supplied email account for election campaigning for themselves or any other candidate.

1.3 Council Communications and Publicity

Council communications are a legitimate way to promote Council activities and services. It is important that all Councillors have access to the Council's communication resources to enable them to fulfil their roles. However, they will not be developed or used in any way that might influence the outcome of a Council election.

Section 55D of the Act prevents Council from releasing pamphlets, notices, advertisements etc. without a written declaration being included from the Chief Executive Officer (CEO) certifying that the item does not contain electioneering material.

Interpretation of section 55D is extremely broad. For the purposes of this Policy, it has been interpreted as referring to any mechanism or means employed by Council to communicate with the community.

~~Municipal~~ Election Period Policy 2017⁷⁹

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In respect of print and electronic media, during the defined Election Period:

- Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer. This power to approve cannot be delegated to another staff member.

No publication or communication during the election period may be printed, published or distributed unless the following certification – over the Chief Executive Officer's signature – has been applied to the material:

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

Although the certification does not need to be printed on published versions, copies of all certifications and certified material must be retained on Council records.

Any publications that cannot be scheduled for before or after the Election Period, whether by Council or anyone acting on behalf of Council, must be 'certified' by the Chief Executive Officer as not containing electoral material – this includes bulk letters/emails and newsletters issued during the Election Period.

- Council publicity and communications will be restricted to promoting normal Council activities and services, and for informing residents about the conduct of the election.
- General correspondence addressed to Councillors will be managed in accordance with normal protocols. However, Councillors will sign only the necessary minimum of correspondence during the Election Period, and correspondence regarding significant, sensitive or controversial matters should be signed by the CEO. Responses will be prepared without political bias.
- Media releases will not mention or quote any Councillor(s) during the Election Period.
- Council employees must not make any public statement that could be construed as influencing the election. Statements of clarification may be required from time to time and these are to be approved by the Chief Executive Officer.
- In the event that a spokesperson is required in relation to any publication or communication, the Chief Executive Officer will fulfil that role or nominate an appropriate officer to act as spokesperson.
- No media advice or assistance will be provided to Councillors in relation to election campaign matters.

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- 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 any candidate's election campaign.
- Council is required by the *Local Government Act* 1989 to produce an Annual Report, which will be published during the Election Period. The Annual Report does not require certification. However, it will not contain any material that could be regarded as electioneering or promotion of individual Councillors. Councillor images will be kept to a minimum, and achievements of individual Councillors will not be included. A Special Council Meeting will be conducted at an appropriate time during the Election Period to finalise the Annual Report process in accordance with the provisions of the *Local Government Act* 1989.

1.4 Social Media and Website

Council's website and social media sites such as Facebook, Twitter, YouTube, Linked In and blogs may continue to be a corporate voice for Council, and will not be used for any electioneering purposes by Councillors or Council officers.

Councillor profiles on the Council website will be limited to a name, portfolio title and contact details. Photographs and profiles will be removed.

Individual Councillors and/or achievements, or any material considered campaign material, will not be published on any of Council's websites.

During the Election Period a statement will be posted on all Council websites and social media sites informing the general public that posting a notice during the Election Period cannot be responded to, or published, should the posting be political in nature.

Council's social media sites will be monitored for electioneering material and any inappropriate posts will be removed as soon as practicable.

No new pages, documents or posts will be uploaded to any East Gippsland Shire Council social media platform during the Election Period without prior written certification by the Chief Executive Officer.

1.5 Functions and Events / Speeches

Wherever practicable, civic events and functions will not be conducted during the Election Period.

Where this is not possible, during the Election Period these will relate only to legitimate Council business and will not be used, or be capable of being seen as being used, to promote the campaign of any candidate.

All speeches prepared for use at events or functions will be reviewed by the Manager Customer Experience and Communication and Corporate Strategy or another officer nominated by the Chief Executive Officer, to ensure the content does not breach this Policy or the Act.

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Where required and consistent with normal practice, a Councillor may make a speech during an event or function. However, the speech must be approved by the Chief Executive Officer in advance and delivered as written. Speeches will not have any political reference that may be construed as providing any candidate with an advantage.

Council officers may conduct or assist with Council Election information sessions.

1.6 Provision of Information

Council recognises that all election candidates have certain rights to information from the Council administration subject to the *Privacy and Data Protection Act 2014* (Vic) which restricts disclosure of certain information.

It is important that current Councillors continue to receive information that is necessary to fulfil their roles. However, Councillors must not request or receive information or advice from Council officers to support election campaigns, and there shall be complete transparency in the provision of all information and advice during the Election Period.

Request for Information Register

During the Election Period a “Request for Information Register” will be maintained by the Office of the Chief Executive Officer. This register will be available for inspection by the public and will record all requests relating to electoral matters, and non-routine requests for information by Councillors and election candidates, as well as the responses provided.

1.7 Advice to Candidates

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

All election related enquiries from candidates, whether current Councillors or not, will be directed to the Victorian Electoral Commission Returning Officer, or where the matter is outside the responsibilities of the Returning Officer, to the Chief Executive Officer or ~~Director~~ Corporate General Manager Business Excellence (or nominee).

1.8 Public Consultation

For the purposes of this Policy, public consultation is any process that involves inviting individuals, groups or organisations or the community generally to comment on an issue or proposed action or proposed policy. It includes discussion of those matters with members of the public.

Wherever possible, public consultations will be avoided during the Election Period.

Where public consultation during the Election Period is essential to maintain the normal day to day business of Council, it may be undertaken only with prior written approval by the responsible ~~Director~~ General Manager.

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The Bang the Table community engagement website – <http://yoursay.eastgippsland.vic.gov.au/your-say> will be disabled for the duration of the ~~caretaker~~ **election** period.

Facilitators of any consultation held during the Election Period must be able to justify to the community the special circumstances making the session necessary and how the risks of influencing the election will be mitigated or prevented to avoid potential electioneering.

In view of the potential for a matter or issue to become contentious or politically sensitive in the course of the Election Period, Council reserves the right to postpone a matter if the issue is likely to affect voting. Council will not continue or commence consultation on any contentious or politically sensitive matter during the Election Period.

No Council advisory board or consultative committee meetings will be held during the Election Period unless exceptional circumstances apply and the Chief Executive Officer has approved the meeting.

1.9 Travel/Accommodation and Professional Development

Councillors will not participate in any interstate or overseas travel during the Election Period in their capacity as a Councillor.

In circumstances where it is imperative that the Mayor (or nominee) represent the organisation on a delegation or forum Council may, by resolution, approve such attendance. If consideration by Council is impractical, the Chief Executive Officer may determine the issue.

Allocations of budget for Councillor seminars/training and attendance at events directly relevant to their work as a Councillor will be allocated on a pro-rata basis between the commencement of the relevant financial year and the election date. This will ensure incoming Councillors receive a fair allocation of the budget allocated for this purpose.

No new professional development opportunities will be undertaken or commenced by Councillors during the Election Period.

1.10 Councillor Expenditure

Claims for the reimbursement of expenses may continue to be lodged by Councillors, provided they conform to the requirements set out in the Councillors Support and Expenses Policy and this Policy.

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NOTE:

This Policy is intended to supplement rather than reproduce Council's legislative requirements, and to guide rather than replace a common-sense approach to fair and equitable Council elections.

The Policy is not intended as a substitute for legal advice and individuals should seek their own independent advice if they are unsure about any aspect of the *Local Government Act* 1989 and associated regulations in relation to the Election Period.

Policy Statement

This Policy establishes a series of ~~"caretaker"~~ practices to ensure that actions of the current Council do not bind an incoming Council and limit its freedom of action.

~~'Caretaker'~~ The provisions operate during the 'Election Period', which commences at midnight 32 days prior to the designated Election Day. The Election Period will conclude at 6.00 pm on Election Day.

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Roles and Responsibilities

These management positions are responsible for implementation and compliance monitoring of the policy in their work areas:

Party / Parties	Roles and Responsibilities
Chief Executive Officer	Ensure that scheduling of significant policy or strategy decisions is made well in advance of the Election Period, or deferred for consideration by the incoming Council. Certify that any published material does not contain electoral matter. Ensure the ' Caretaker Election Period Statement' is included on Council Reports where applicable.
Director Corporate <u>General Manager Business Excellence</u>	Policy owner. Ensure all Councillors and staff are informed of the requirements of this policy. Provide advice and guidance on the implementation of the policy. Ensure that a copy of this policy is given to each Councillor as soon as practicable after it is adopted; available for inspection by the public at all Council Business, Service and Outreach Centres; and published on Council's website.
Responsible Directors <u>General Managers</u>	Approve in writing, any public consultation that is considered essential to maintain the normal day to day business of Council and must be conducted during the Election Period.
Manager <u>Customer Experience and Communications</u> and Corporate Strategy	Review all speeches to be delivered by Councillors at Council approved events during the Election Period. Implement an appropriate process to ensure that no material covered by section 55D of the Act is published without CEO certification.
<u>Executive Leadership Group</u> Team	Provide support and guidance to staff with implementing this policy.
Office of the CEO	Maintain the Request for Information Register and ensure it is available for public inspection on request.
Governance and Compliance Unit	Assist with any day to day queries with respect to the implementation of this policy.
All Councillors and staff	Adhere to the guiding principles as outlined in this policy.

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All staff have an obligation to report occurrences of non-compliance with Council policy. Incidents of non-compliance should be reported immediately to the Policy owner or the Governance Unit.

Where non-compliance has been identified the matter will be investigated by internal review and where applicable further action taken in accordance with Council's Disciplinary Procedures Policy.

References and Supporting Documents

Council Plan 2017-2021 goal 4.1 is to ensure:

"East Gippsland Shire Council is inclusive, engaged and open.."

Applicable Legislation:

- *Local Government Act 1989*
- *Local Government (Electoral) Regulations 2005*
- *Local Government Amendment (Improved Governance) Act 2015*

Other:

- Councillor Code of Conduct
- Councillors Support and Expenses Policy
- East Gippsland Shire Council Staff Code of Conduct

Supporting Procedures and Guidelines

Relevant extracts of the *Local Government Act 1989* are provided at **Attachment 1**.

Privacy and Human Rights Consideration

All personal information collected by East Gippsland Shire Council in connection with this policy will be handled in accordance with all applicable privacy legislation and will be used only for the purpose of compliance with the Act. Personal information about an individual held by Council must only be used to carry out the primary or directly related purpose of collection. Furthermore, Council must not collect personal information unless the information is necessary for one or more of its functions.

Individuals have the right to make a complaint to the Victorian Commissioner for Privacy and Data Protection if they believe their privacy has been breached.

The ~~Municipal General~~ Election Period –~~Caretaker~~ Policy has been assessed as compliant with the obligations and objectives of the Victorian Charter of the *Human Rights Responsibilities Act 2006*.

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Definitions

Term	Meaning / Responsibility
Caretaker period	See 'Election Period'.
Caretaker statement	Statement published on all reports submitted to a Council Meeting or a Special Council Meeting for decision by the Chief Executive Officer.
Certification by CEO	The certification by the Chief Executive Officer that material for publication or distribution does not contain electoral matter as defined under section 55D of the Act.
Council Officers	Members of East Gippsland Shire Council staff
Election Period	Section 3(1) of the Act defines the Election Period to be the 32-day period that starts at midnight on the last day of nominations and ends at 6.00 pm on Election Day.
<u>Election Period statement</u>	Statement published on all reports submitted to a Council Meeting or a Special Council Meeting for decision by the Chief Executive Officer.
Electoral matter	<p>Defined in the Act as any matter that is intended or likely to affect voting in the election. Material that contains an express or implicit reference to or comment on:</p> <ul style="list-style-type: none"> the election a candidate in the election an issue submitted to or otherwise before the voters in connection with the election (or issues of considerable public contention) any other material that is likely to affect voting at the election. <p>Electoral matter includes material which;</p> <ul style="list-style-type: none"> 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 <p>Publicises the achievements of the elected Council.</p>

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Term	Meaning / Responsibility
<i>Inappropriate decision</i>	A decision made by a Council during an Election Period including any of the following— (a) decisions that would affect voting in an election; (b) decisions that could reasonably be made after the election.
<i>Major policy decision</i>	Defined in the Act as being a decision: <ul style="list-style-type: none"> • In relation to the employment, remuneration or termination of the CEO (other than a decision to appoint an acting CEO) • To enter a contract the total value of which exceeds either \$100,000 or 1% of council revenue from rates in the preceding financial year (whichever is the greater) To exercise any power under section 193 if the sum assessed exceeds either \$100,000 or 1% of council revenue from rates for the preceding financial year (whichever is the greater).
<i>Publication</i>	A broad interpretation should be used to include all documents that are produced for the purpose of communicating with people in the community, including newsletters, advertisements and notices, media releases, leaflets and brochures, emails and mailouts to multiple addresses, electronic information and web based productions including Council's website and social media pages.
<i>Publish</i>	Means publish by any means including by publication on the Internet.
<i>Significant decisions</i>	Include irrevocable decisions that commit the council to substantial expenditure or major actions; or decisions that will have a major impact on the municipality or the community and will unreasonably bind the incoming Council.
<i>The Policy</i>	Municipal Election Period Caretaker Policy

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Revision History and Review

Version Control	Approved Amended Rescinded	Date Effective	Approved By	ECM Document Reference	Summary of Changes
1	Approved	07/08/2012	Council	4897306	
2	Approved	09/04/2013	Council	5167063	Redraft into new template format
3	Approved	01/03/2016	Council	6647876	Merge Policy and Procedure into one Policy document
4	Approved	2103 /1 10 /2017	Council	7336118	Amended to make dates/times/content generic rather than specific to the timeframes of the previous election
5	<u>Draft</u>		Council		Redraft into new template format, update position title <u>s</u>

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ATTACHMENT 1 - Extracts *Local Government Act 1989*

Section 3(1) of the Act defines the election period to be the 32-day period that starts at midnight on the last day of nominations and ends at 6.00 pm on Election Day.

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

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

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

- The employment or remuneration of the CEO.
- Contracts exceeding specified values.
- Entrepreneurial ventures exceeding specified values.
- Major policy decisions.
- Significant decisions.
- Decisions which unreasonably commit the incoming Council.

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.

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76B Primary principle of Councillor Conduct

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

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

76BA General Councillor Conduct principles

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

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

76C Councillor Code of Conduct

- (1) A Council must develop and approve a Councillor Code of Conduct for the Council within 12 months after the commencement of section 15 of the *Local Government Amendment (Councillor Conduct and Other Matters) Act 2008*.
- (2) A Council must review the Councillor Code of Conduct within the period of 12 months after a general election.
- (3) A Councillor Code of Conduct-
 - (a) must include the Councillor conduct principles;
 - (b) may set out processes for the purpose of resolving an internal dispute between Councillors;
 - *****
 - (c) must include provisions in respect of any matter prescribed for the purpose of this section;
 - (d) may include any other matters relating to the conduct of Councillors which the Council considers appropriate.

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- (4) A Councillor Code of Conduct must not be inconsistent with any Act or regulation.
- (5) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act or regulation.
- (6) A copy of the current Councillor Code of Conduct must be-
 - (a) given to each Councillor;
 - (b) available for inspection by the public at the Council office and any district offices.
- (7) On and from the commencement of section 15 of the *Local Government Amendment (Councillor Conduct and Other Matters) Act 2008*, a Councillor Code of Conduct is taken to include the Councillor conduct principles.

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.

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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.

77 Confidential information

- (1) A person who is, or has been, a Councillor or a member of a special committee, must not release information that the person knows, or should reasonably know, is confidential information.
- (2)

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 loss or damage.
- (6) In this section, a major policy decision means any decision—

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- (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.

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.

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