



PRE - ELECTION

Policy Number	C30	Directorate	Corporate Services
Council Meeting	24 June 2015	Department	Governance Services
Agenda Item			
No.E.8			
Council Meeting	30 June 2015	Primary Author	David Roche
Adoption Date			
Revision Date	30 June 2018	Secondary Author	Luke Anthony

POLICY OBJECTIVE

Council will ensure that actions (both actual and perceived) of Council in the period immediately prior to a Council election are consistent with good governance practices and that it does not resolve matters that would be more appropriately determined by the incoming Council.

This policy applies to the Council, Special Committees or a person acting under delegation given by the Council.

LEGISLATIVE PROVISIONS

Local Government Act (1989) sections 3, 55D and 93A.

Governance Practice Notes and guidance prepared from time to time by the Department of Transport, Planning & Local Infrastructure (DTP&LI)

Councillor Code of Conduct

Staff Code of Conduct

Councillor Support and Reimbursement Policy

Local Government Victoria Practice Notes April 2004, 5 August 2004, 7 September 2004 and 9 March 2012

Local Government Investigations and Compliance Inspectorate Information Bulletin: Election Caretaker Policy August 2012

Definitions

CEO – Chief Executive Officer

Election Period – as defined in section 3 Local Government Act 1989

“means the period that –

- a. Starts on the last day on which nominations for that election can be received;*
- and*
- b. Ends at 6 pm on election day”*

LGA – Local Government Act 1989



POLICY STATEMENT

If this policy or parts thereof is inconsistent with Governance Practice Notes and guidance provided by DTP&LI the latter shall prevail.

Major Policy Decisions

Chief Executive Officer

Council will not, during the election period, make a decision:

- To employ a CEO.
- To terminate the CEO's employment.
- To vary the CEO's contract.
- To alter the remuneration of the CEO.

Council may appoint an acting CEO, if necessary, during the election period.

Contracts

Council will not enter into a contract that exceeds whichever is the higher of the following amounts:

- One per cent of the Council's total revenue from rates and charges (under section 158 LGA) in the preceding financial year. This does not include revenue from special rates and charges.
- The amount fixed by Order in Council, under section 186(1) LGA, being the value at which Council must give public notice to invite tenders or expressions of interest for the contract.

At the time of making this policy the amounts fixed under section 186(1) were:

- \$150,000 for goods and services; and
- \$200,000 for works contracts.

Entrepreneurial Powers

During the election period, Council will not exercise any entrepreneurial power under section 193 of the LGA if the amount assessed under section 193(5A) exceeds the specified value.

The amount assessed under section 193(5A) is the value of the total investment and the total risk exposure.

The specified value that this must not be exceeded is the higher of the following amounts:

- One per cent of the Council's total revenue from rates and charges (under section 158 LGA) in the preceding financial year. This does not include revenue from special rates or special charges.
- \$100,000.

If the 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.

If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption subject to any conditions or limitations the Minister considers appropriate.



An application for a ministerial direction should demonstrate that the following apply:

1. The consequences of failing to make the decision would have serious negative impact on the community.
2. The decision cannot be delayed until after the election period.
3. The Council has been unable to make the decision prior to the election period or the need to make the decision prior to the election period was unforeseeable.

If an application is made it should include the following:

1. Details of the matter to be addressed by the proposed decision along with reasons why the decision is important and urgent.
2. A description of the degree of political sensitivity involved in the matter and whether it is likely to be an issue in the Council election.
3. Details of any funding being provided by State or Federal Government, along with contact details for the relevant agency.
4. An explanation of why the matter could not have been, or was not, resolved prior to the commencement of the election period.
5. An explanation of why the decision cannot be delayed until after the election period.
6. An extract from the Council minutes recording the Council resolution to seek an exemption.

A major policy decision made during the election period is invalid.

Council may not delay a decision that is required within a specified time frame by legislation e.g. planning decisions with timelines specified under the Planning and Environment Act 1987, or decisions required by the Local Government Act 1989, such as the preparation of an Annual Report.

Other decisions (discretionary)

Council and Councillors will not during the election period:

- Allocate community grants or other forms of direct funding for community organisations.
- Allocate funding from Councillor Discretionary Funds.
- Approve major planning scheme amendments.
- Make changes to strategic objectives or strategies in the Council Plan.

Significant Decisions

During the pre-election period the Council will not make significant decisions that bind the incoming Council except where:

- (i) the issue is urgent;
- (ii) failure to make a decision would be a breach of legislative requirements;
- (iii) the issue cannot be reasonably deferred without major negative repercussions; or
- (iv) the decision relates to the completion of an activity already undertaken and endorsed by Council e.g. via the Budget, Council Plan etc.

It shall be the responsibility of the Chief Executive Officer to determine whether a matter meets these criteria.

CEO Certification of publication and materials



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 CEO.

Councillors or members of Council staff must not 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, a Councillor using Council resources if the electoral advertisement, handbill, pamphlet or notice has not been certified by the CEO.

Guidance about publications and resources is contained in Attachment 1 to this policy.

Council Resources

The 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. In any circumstances where the use of Council resources might be construed as being related to a candidate's election campaign, advice will be sought from the Chief Executive Officer or the Chief Executive Officer's designated delegate as to the nature of the usage.

The following protocols shall apply during the pre-election period:

- Council resources, including vehicles, offices, support staff, hospitality services, equipment and stationery will be used exclusively for normal Council business during the pre-election period, and will not be used in connection with any election matter. Similarly, Council funded telephones and e-mail addresses are not to be used by Councillors as contact points in their election campaign material.
- Reimbursement of Councillors' out-of-pocket expenses during the pre-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 a candidate's election campaign.
- No Council logos, letterheads, or other South Gippsland Shire Council branding will be used for, or linked in any way to, a candidate's election campaign.
- The title "Councillor" is for use in relation to Council business and will not be used in electoral material.

Information

The Council recognises that all election candidates have rights to information from the Council administration, subject to the Information Privacy and Data Collection Act (2014). Neither Councillors nor candidates will receive information or advice from Council staff that might be perceived to support election campaigns, and there shall be complete transparency in the provision of all information and advice during the pre-election period. However, it is important that sitting Councillors continue to receive information that is necessary to fulfil their elected roles.

- Information and briefing material prepared by staff for Councillors during the pre-election period will relate only to factual matters or existing Council services. Such information will not relate to policy development, new projects or



matters that are the subject of public or election debate or that might be perceived to be connected with a candidate's election campaign.

- An Information Request Register will be maintained during the Pre-Election Period. This Register will be a public document that records all requests for information by Councillors and candidates, and the responses given to those requests.
- Applications for information under the Freedom of Information Act (Victoria) 1982 will be dealt with in a normal manner.

Publicity

- It is recognised that Council publicity is intended to promote Council activities and services. Council publicity will not be used in any way that might influence the outcome of a Council election.
- During the pre-election period, no Council employee may make any public statement that could be construed as influencing the election. This does not include statements of clarification that are approved by the Chief Executive Officer.
- Any requests for media advice or assistance from Councillors during the pre-election period will be channelled through the Chief Executive Officer, or the Chief Executive Officer's designated delegate. No media advice or assistance will be provided in relation to election campaign matters, or in regard to publicity that involves specific Councillors.
- Councillors will not use their position as an elected representative or their access to Council staff and other Council resources to gain media attention in support of an election campaign.

Assistance to Candidates

The Council affirms that all candidates for the Council election will be treated equally.

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

Monitoring the Policy

The Chief Executive Officer is responsible for determining any issues that arise in the implementation of this policy.

RISK ASSESSMENT

This policy enables:

- Council, Councillors and candidates to understand their requirements and obligations.



- Demonstrates Council's commitment to probity in its elections.
- Community confidence and trust in Council.
- Council to address matters that may not be explicitly captured in the LGA and, when followed will mitigate the likelihood of any breaches of the LGA.

IMPLEMENTATION STATEMENT

As soon as practical and no later than 30 days prior to the commencement of the pre-election period, the Chief Executive Officer will ensure that all Councillors and staff are informed of the requirements of this policy.

All staff have a responsibility to monitor the implementation of this policy and immediately refer any departures or deviations from this policy to the Chief Executive Officer.



Attachment 1

	Publications	Resources
	<i>Council advertisements, handbills, pamphlets and notices must be certified by the CEO during an election period. Penalties apply to the certification, printing, publishing or distribution of such documents containing electoral matter.</i>	<i>Councils should ensure that Council resources, including staff, are not used for electoral campaigning purposes during elections. In some cases misuse of Council resources may be a criminal offence that can be</i>
Annual Report	<p>The Annual Report is required by law and would not normally be considered an “advertisement, handbill, pamphlet or notice”. It should not require certification.</p> <p>However, the Annual Report must not include material that is electioneering or that publicises the attributes or achievements of individual Councillors.</p> <p>In addition, if a Council will be printing or distributing a greater number of copies of the Annual Report than usual, it may be regarded as a pamphlet and should be subject to certification by the CEO.</p>	<p>Section 131(6) of the Act requires the Council to normally submit its Annual Report to the Minister no later than 30 September each year.</p> <p>This is a proper use of Council resources.</p>
Annual Report summary	Any publication of an extract or summary of the Annual Report is likely to be regarded as a pamphlet and must be subject to the certification process.	Council resources should not be used to produce or distribute any summary of an Annual Report during the election that would be regarded as electoral material.
Council meetings	<p>Agenda papers and minutes of meetings would not normally be considered advertisements, handbills, pamphlets or notices and should not require certification.</p> <p>However, if Council meeting papers are printed or published for a wider distribution than normal, they should be treated as pamphlets and be subject to the certification process.</p>	The conduct of Council meetings, as well as the preparation of agenda papers and minutes, is part of normal Council business. It is expected that they would continue to be resourced by the Council administration during an election period.



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Advertisements & notices	<p>All Council advertisements and notices must be subject to the certification process during an election period. This includes job advertisements and various notices, such as, Council meetings and road closures.</p> <p>Newspaper notices of meetings are not regarded as electoral matter under section 3(1) of the Act and can be certified.</p>	
Web site – new material	<p>Any new material published on the Council's web site during the election period that may be considered an advertisement, handbill, pamphlet or notice must be subject to the certification process.</p> <p>As noted above, Council agendas, minutes of meetings and full Annual Reports do not require certification if published in the usual way.</p>	Council's web sites should not be used to convey information that could be regarded as electoral material unless it is only about the election process.
Web site – existing material	<p>It is not necessary to certify material that was published on the Council's web site well before the election period.</p> <p>However, it is recommended that web sites be checked at the start of the election period:</p> <ul style="list-style-type: none"> • Profiles of Councillors who are candidates should be removed from the web site, but not contact details. • Information prominently displayed on the web site that might be regarded as likely to influence how people vote should be removed. 	Council's web sites should not be used to convey information that could be regarded as electoral material unless it is only about the election process.



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Social media	Any publication on social media sites like Facebook or twitter, which are auspiced by the Council, will generally require certification by the CEO. Similar requirements apply to Council blog sites.	Council auspiced social media must not be used for election campaigning. It is recommended that a Council consider either limiting access to their social media sites during election periods or undertake constant monitoring to ensure no electoral matter is posted.
Email	Emails that are part of the normal conduct of Council business should not require certification. However, any emails with multiple addressees, used for broad communication with the community, should be subject to the certification process.	Council email services must not be used for electioneering purposes. If necessary, Councillors should be referred to one or more of the free email providers for private email addresses.
Correspondence	Mass mail outs or identical letters sent to a large number of people by or on behalf of Council must be subject to the certification process.	Council staff should not prepare Councillors' private mail or electoral correspondence and such material must not be printed on Council stationery or using Council equipment.
Mobile phones		Mobile phone costs associated with electioneering should not be paid by the Council. This should be addressed in Council policies and procedures and properly monitored. If Councillors are provided with a Council owned mobile phone, suitable procedures should be put in place. This may involve <ul style="list-style-type: none"> • Requiring Councillors to use another mobile phone for electioneering, or • Establishing arrangements to monitor usage and ensure reimbursement by Councillors of costs associated with electioneering or other private use.



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Council offices and libraries	<p>Existing documents available to the public at Council offices and libraries do not normally require CEO certification.</p> <p>However, any increase in the availability of a publication should be subject to certification.</p> <p>It is also recommended that staff check material in libraries and offices to make sure that publications including electoral matter are not prominently displayed.</p>	<p>Electoral material, including pamphlets, posters and notices should not be visible or available at any Council premises during an election.</p> <p>The only exception to this is material issued by the returning officer for the purpose of conducting the election.</p>
Media releases	Media releases should be regarded as documents that require certification by the CEO.	<p>Council staff must not prepare, or assist in the preparation of, media releases that contain electoral material.</p> <p>Councillors should be advised that media releases dealing with their election campaign should only be issued privately.</p>
Events	Material printed or disseminated during the election period to publicise a function or event must be subject to the certification process.	<p>Functions or events for the purpose of electioneering must not be resourced or publicised by the Council.</p> <p>Normal Council events are not prohibited in the election period. However, it is recommended that they be kept to a minimum.</p> <p>Where events do occur, Councillors should be advised that they are representing the Council and should not use the opportunity for electioneering.</p>
Speeches	Any publication or distribution of Councillors' speeches by the Council must be subject to the certification process.	Council staff and resources should not be used to prepare or publish speeches that contain electoral matter.



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Title of “Councillor”		<p>Councillors may use the title “Councillor” in their election material, as they continue to hold their positions in the period.</p> <p>To avoid confusion, Councillors should be advised to ensure that any election publication using the title “Councillor” clearly indicates that it is their own material and does not represent Council.</p>
Returning officer	<p>The election returning officer is a statutory position and does not perform his or her duties on behalf of the Council. Therefore, publications by a VEC returning officer do not need certification.</p> <p>However, if the returning officer is a member of Council staff, section 55D(4) may apply and the Council should seek advice.</p>	