



South Gippsland Shire Council

## COUNCILLOR STANDING AS A STATE OF FEDERAL CANDIDATE (C74)

Policy Number	C74	Directorate	Performance & Innovation
Council Meeting	19 May 2021	Department	Council Business
Meeting Item No.	TBC	Primary Author	Coordinator Council Business
Next Review Date	May 2025		

COUNCIL POLICY

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### GOOD GOVERNANCE FRAMEWORK – COUNCILLOR STANDING AS A STATE OR FEDERAL CANDIDATE

#### *Overarching Principle*

*The Councillor Standing as a State or Federal Candidate Policy supports the Local Government Act 2020 by providing guidance to candidates or potential candidates seeking a position through a State or Federal election to avoid misusing their position and/or access to Council resources for these personal pursuits.*

*The Policy plays an important role within the Good Governance Framework by supporting the pillars of 'Structure, Systems and Policies', 'Risk and Compliance' and 'Culture and Compliance'. Every potential or nominated candidate is responsible and accountable for transparently separating their personal pursuits from their Council obligations.*

#### 1. PURPOSE

- 1.1 The principles of conduct require Councillors to act honestly and to exercise reasonable care and diligence in performing their role. It is an offence for a Councillor to make improper use of their position. The purpose of this Policy is to provide guidance to Councillors standing as candidates in State or Federal elections to ensure they act with due diligence by separating their role as Councillor from their personal pursuits.

#### 2. SCOPE

- 2.1 This Policy applies to prospective and nominated Councillors running for office in State or Federal Parliament. It also applies to other Councillors and Council staff to ensure that the requirements of the Policy are followed.

#### 3. POLICY PRINCIPLES

##### 3.1 Principles of Conduct for Councillors as Candidates (Prospective and/or Nominated) in State or Federal Elections

Councillors are bound by the Local Government Act 2020, the Councillor Code of Conduct (C14) and other Council policies. It is the responsibility of Councillors as Prospective and/or Nominated Candidates at a State or Federal election to act in accordance with these laws and policies. Requirements that will assist Councillors include:



### **3.1.1 Advice to Chief Executive Officer (CEO) In Writing**

A Councillor who becomes an endorsed candidate of a registered political party or publicly expresses an intention to run as an independent candidate for a State or Federal election (a Prospective Candidate), should provide written advice to the CEO, as soon as practicable. The CEO is then to provide written advice to all Councillors.

### **3.1.2 Declaration to Council**

A councillor who is a Prospective Candidate, should declare his/her intended candidacy at a meeting of the Council as soon as practicable after notifying the CEO pursuant to 3.1.1.

### **3.1.3 Leave of Absence Requested**

A Councillor who nominates as a candidate for a State or Federal election (a Nominated Candidate), should apply for leave of absence from the Council, This leave of absence should commence no later than the date of their nomination as a candidate with the relevant electoral commission for the election (Nomination Date) and conclude no earlier than the close of voting for the election. During this period, a Councillor who is on a leave of absence should not attend any type of meetings with Council or otherwise act as a Councillor.

### **3.1.4 Councillor / Staff Relationship Protocols Observed**

Any councillor/staff relationship policies and protocols which the Council has in place should be observed by a Nominated Candidate and this should apply from their Nomination Date until the close of voting for the election.

### **3.1.5 Council to Approve Leave Application**

The Council, upon receiving an application for a leave of absence from a Councillor who is a Nominated Candidate or who intends to become a Nominated Candidate, should approve that application.

### **3.1.6 Differentiate Role of Councillor from Role as Candidate when making Public Comments**

A Councillor who is a Prospective Candidate or a Nominated Candidate, should take care to differentiate between his/her role as a State or Federal election candidate and role as a Councillor when making public comment.

### **3.1.7 Differentiate Role of Councillor from Role as Candidate**

A Councillor who is a Prospective Candidate or a Nominated Candidate, should not use Council activities, including Council or committee meetings and Council-related external activities in relation to his/her candidacy.



### 3.1.8 Resignation from Council if Successfully Elected

Section 34(2)(a) of the *Local Government Act 2020* specifies that a person is not qualified to be a Councillor of a Council if the person is a member of the Parliament of Victoria or of the Parliament of the Commonwealth of Australia or of another State or Territory of the Commonwealth. Section 35(1)(a) states that a Councillor ceases to hold the office of Councillor and the office of the Councillor becomes vacant if the Councillor ceases to be qualified to be a Councillor.

A Councillor must resign immediately if they are successful in a State or Federal election.

### 3.1.9 Legal Advice is at the Discretion of the Councillor

It may be prudent for a Councillor to seek their own legal advice, at their cost, in regard to the various issues associated with running as a candidate whilst still a Councillor.

## 3.2 Avoidance of Conflict of Interests

To avoid an actual, or perceived Conflict of Interest, a candidate needs to be mindful to declare conflicts of interest that may pertain to their conflicting role as a candidate.

### 3.2.1 Take Leave of Absence Immediately after Nominating

A Councillor, having nominated, should immediately commence their leave of absence as a Councillor and not act in their role as a Councillor until the end of the election.

### 3.2.2 Return Council Resources and Vehicles upon Nomination

A Councillor, having nominated, is to immediately return Council resources and vehicles to the Council Business Team including the following:

- a. Council vehicles, information technology equipment, mobile phone, stationery, Council letterheads, business cards, documents or information provided as a Councillor and any other associated resources.

## 3.3 Prevention of Misuse of Position and/or Resources

**3.3.1** Councillors will ensure due propriety is observed to ensure Council resources are not used or construed as being related to a candidate's election campaign. If in doubt advice is to be sought from Council's CEO as to the nature of the usage.

**3.3.2** Council resources, including vehicles, offices, support staff, hospitality services, equipment and stationery will be used exclusively for normal Council business 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.

**3.3.3** Reimbursement of Councillors' out-of-pocket expenses during the election period will only apply to costs that have been incurred in the



performance of normal (required) Council duties, and not for expenses that could be perceived as supporting or being connected with a candidate's election campaign.

**3.3.4** 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.

**3.3.5** Media attention or marketing campaign opportunities are not to be sought through participation in Council activities, meetings, events or network meetings, in support of an election campaign.

#### 4. RISK ASSESSMENT

This Policy enables:

- 4.1 Council, Councillors, Candidates and Council Staff to understand the requirements and obligations of a Councillor running as a candidate in State or Federal elections.
- 4.2 Council to demonstrate its commitment to openness and transparency by articulating requirements expected of Councillors running as candidates for other levels of government.
- 4.3 Community confidence and public trust in Council to be maintained or improved.
- 4.4 Council to address matters that are not explicitly captured in the Local Government Act, 2020 and, when followed will mitigate the likelihood of any breaches of the Local Government Act, 2020.

#### 5. IMPLEMENTATION STATEMENT

##### 5.1 Publication of Policy

The Policy will be published on Council's website. The Policy is to be included in the Councillor Induction Program.

##### 5.2 Roles and Responsibilities

It is a Councillor's responsibility to ensure they do not misuse their position as a Councillor in regard to conflicting roles and personal interests, including running as a candidate in a State or Federal election. Section 123 of the *Local Government Act, 2020* prohibits Councillors from misusing or making inappropriate use of their position. A breach of Section 123 attracts serious penalties, including possible imprisonment.

##### 5.3 Human Rights Charter

This Policy is a key mechanism for providing assurance to the Council that Councillors are meeting their obligations to declare their nomination of candidate at State or Federal election and/or a conflict of interest as a result of this candidature as required by the *Local Government Act 2020* and the *Charter of Human Rights and Responsibilities Act 2006* and associated obligations.



#### 5.4 Non-compliance with this Policy

A Councillor has a duty to act in the public interest above their private interests when carrying out their official capacity and functions of a Councillor and to abide by this Policy.

#### 5.5 Monitoring, Evaluation and Review

Council will undertake a four-yearly periodic review of this Policy to ensure changes required to strengthen or update the Policy to meet changing circumstances are made in a timely manner, or earlier if changes to legislation or practices require an earlier intervention.

### 6. LEGISLATIVE PROVISIONS

This policy has been developed to support the Council to comply with its good governance and conduct obligations in line with various legislation, principally the *Local Government Act 2020*.

SUPPORTING INFORMATION	
<i>Legislative Provisions</i>	<i>Local Government Act 2020</i>
<i>Council Supporting Documents</i>	<i>Councillor Code of Conduct (C14) Councillor Support and Expenditure Policy (C51) Governance Rules (C82), incorporating the Election Period Policy (C30)</i>
<i>Related Documents</i>	<i>MAV Policy Position – Candidature of Councillors State or Federal Elections. VLGA Councillor Development Series – Councillors as Candidates in State or Federal Elections</i>
<i>File Number</i>	<i>D XXXXX</i>
<i>Previous Version File Number</i>	<i>D8787418</i>

### 7. DEFINITIONS

<b>Council</b>	South Gippsland Shire Council
<b>Councillor</b>	Is an elected member of the Council as defined by the <i>Local Government Act 2020</i> (the Act).
<b>Chief Executive Officer / CEO</b>	Is the Chief Executive Officer appointed by Council as defined by the <i>Local Government Act 2020</i> (the Act)
<b>Mayor</b>	Is the Mayor elected by Council and/or Councillor(s) as defined by the <i>Local Government Act 2020</i> (the Act).
<b>Prospective Candidate</b>	A Councillor who has not yet nominated to be a candidate for a State or Federal election, but who for all intents and purposes is planning to become a nominated candidate
<b>Nominated Candidate</b>	A Councillor who has officially nominated to run in a State or Federal election, once nominations commence a few weeks prior to the election.



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<i>REVISION HISTORY</i>			
<i>Version</i>	<i>Approved</i>	<i>Approval Date Range</i>	<i>Sections Modified</i>
<i>1.0</i>	<i>Council Meeting</i>	<i>19 December 2018</i>	<i>New Policy</i>
<i>2.0</i>	<i>Council Meeting</i>	<i>May 2021</i>	<i>Minor Revision</i>

**8. ATTACHMENT**

Nil