

ELECTION CARETAKER PERIOD

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Applicable to Unit(s):	Councillors and Organisation
Responsible Officer:	General Manager Corporate Services
Statutory Reference:	<i>Local Government Act 1989</i>

OVERVIEW

The purpose of this policy is to outline the conduct of Council during the Caretaker Period for Municipal General Elections. The Policy aims to ensure that general elections are conducted in a manner that is ethical, fair and equitable, are publicly perceived as such and support the conduct of good governance for Council and the organisation during the Caretaker Period for Municipal General Elections. The Policy will also facilitate the continuation of the ordinary business of local government throughout the caretaker period in a responsible and transparent manner, in accordance with statutory requirements and established “caretaker” conventions.

This Policy also commits Council during the caretaker period to:

- Avoid making significant new policies or decisions that could unreasonable bind a future Council; and
- Ensure that public resources, including staff resources, are not used in election campaigning or in a way that may improperly influence the result of an election, or improperly advantage existing Councilors as candidates in the election.

THE POLICY

1. Background

- 1.1 In the lead up to an election the local government sector adopts a Caretaker Period to avoid actions and decisions that may be interpreted as influencing voters or binding an incoming Council. Specific provisions have been incorporated in the *Local Government Act 1989* (the Act), that prohibit Council from making major policy decisions or publishing or distributing electoral matter in a Caretaker Period.
- 1.2 Section 93A of the Act prescribes the conduct of a Council during the election period. This policy is seen as a way to ensure that Council complies with the Act and the municipal elections for Wellington Shire Council are conducted in a manner that is fair, equitable, upholds the highest standards of democratic governance and is publicly perceived as such.

2. Definitions

- 2.1 It should be noted that where terms used in this Policy are defined in the Act, their use in this Policy is consistent with the definitions in the Act. Definitions used in this Policy are detailed in Attachment 2.

3. Caretaker Period

- 3.1 The “election period” is defined by the Act as starting on the last day for nominations and ending at 6pm on the Election Day. A period of 32 Days..
- 3.2 During the “election period” the Council will be deemed to be in Caretaker mode.

The Chief Executive Officer will ensure that all employees are informed of the requirements of this policy.

4. Decision Making

- 4.1 Careful consideration will be given to what decisions at council or special committee meetings should be made in the 32 days leading up to the general election, so that the incoming councilors are not unreasonably compromised.
- 4.2 It is an established democratic principle that elected bodies should not unnecessarily bind government during an election period. The Council therefore commits to the principle that it will make every endeavour to avoid making decisions that bind the incoming Council.
- 4.3 This includes a commitment to not only comply with the requirements of Section 93A of the Act, pertaining to major policy decisions, but as well relating to significant decisions as specified within this policy.
- 4.4 The types of decisions that should be avoided are:
- 4.4.1 Allocation of community grants or other direct funding to community organisations
 - 4.4.2 Major planning scheme amendments
 - 4.4.3 Awarding of contracts both civil and service type contracts
 - 4.4.4 Changes to strategic objective
 - 4.4.5 Strategies in the council plan
 - 4.4.6 Questions on notice
 - 4.4.7 Notice of motions
 - 4.4.8 Introduction of late items
 - 4.4.9 Decision relating to the employment or remuneration of a Chief Executive Officer, other than a decision to appoint an acting Chief Executive Officer
 - 4.4.10 To terminate the appointment of a Chief Executive Officer
- 4.5 Ordinary Council Agenda / Special Council Meeting Agenda and / or Special Committee Meeting Minutes are to be carefully vetted by the Chief Executive Officer and / or Corporate Management Team to ensure that no agenda item is included in any council agenda during the election period that could potentially influence voters’ intentions or encourage candidates to use as part of electioneering.

- 4.6 During the caretaker period, the Chief Executive Officer will ensure that a “Caretaker Statement” is included in every report submitted to an Ordinary Council Meeting and or Special Council Meeting.(if required) for a decision.
- 4.7 The “Caretaker Statement” will specify one of the following;
- 4.7.1 “The recommended decision is not a “Major Policy Decision” as defined in section 93A of the *Local Government Act 1989* or a “Significant Decision” within the meaning of this policy:
 - 4.7.2 “The recommended decision is not a “Major Policy Decision” within the context of *Local Government Act 1989*. The recommended decision is a “Significant Decision” within the meaning of this policy, but an exception should be made for the following reason (insert reasons for making an exemption)
 - 4.7.3 “The recommended decision is to seek an exemption from the Minister because the matter requires a “Major Policy Decision” within the meaning of section 93A of the *Local Government Act 1989*.
 - 4.7.4 “The recommended decision is a “Major Policy Decision”, as defined in section 93A of the *Local Government Act 1989*, but an extraordinary circumstances exemption was granted by the Minister for Local Government on (insert date)

5. Major Policy Decisions

- 5.1 Section 93A of the Act prohibits 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. If however Council considers that there are extraordinary circumstances which require the make of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption.

Section 93A (6) of the Act defines a major policy decision as:

- (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
 - a. \$1000,000 or such higher amount as may be fixed by Order in Council under section 186(1); or
 - b. 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.

6. Significant Decisions

- 6.1 Over and above the decisions specified in section 93A of the Act, the Council will avoid making other decisions during the Caretaker Period that are of a significant nature and would unreasonably bind the incoming Council.

Significant decisions include:

- (a) Irrevocable decisions that commit the Council to substantial expenditure or major actions; and
- (b) Irrevocable decisions that will have a major impact on the municipality or the community.

7. Public Consultation

7.1 Definition

Public consultation means a process which involves an invitation or invitations to individuals, groups, organisations or the community generally to comment on an issue or proposed action or proposed policy, and includes discussion of that matter with the public.

7.2 Right to Postpone

Public consultation may be undertaken during the Caretaker Period to facilitate the day to day business of Council, to ensure matters continue to be proactively managed. Consultation will avoid express or implicit links to the election. In view of the potential for a matter or issue to become contentious or politically sensitive in the course of an election period, Council reserves the right to postpone a matter if the issue is likely to affect voting.

7.3 Statutory Requirements

The requirements of 7.2 (above) do not apply to public consultation required under the *Planning and Environment Act 1987*, or matters subject to section 223 of the Act.

8. Council Resources

- 8.1 It is an established democratic principle that public resources must not be used in a manner that would influence the way people vote in elections. Council therefore commits to this principle in that it will ensure Council resources are not used inappropriately during a Council election. This includes a commitment to comply with the following procedures in addition to the requirements of section 55D of the Act.
- 8.2 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, the matter must be referred to the Chief Executive Officer or his or her delegate
- 8.3 Council resources, including offices, support staff, hospitality services, equipment and stationery will be used exclusively for normal Council business during the election Caretaker Period, and shall not be used in connection with any electioneering activity.
- 8.4 Reimbursements of Councillors' out-of-pocket expenses during the election Caretaker 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.

- 8.5 No Council logos, letterheads or other corporate branding will be used for, or linked in any way to, a candidate's election campaign.
- 8.6 Photos or images taken or provided by Council are not to be used by Councillors for the purposes of electioneering or in support of their election campaign. This applies equally to images on Council's website that may be copied.
- 8.7 No election material or active campaigning is to be conducted at Council sponsored events or be displayed in any Council building.
- 8.8 Prior to the Caretaker Period the Chief Executive Officer will ensure that all members of Council staff are advised in regard to the application of the caretaker procedures.
- 8.10 In applying these principles, the Council understands that the following will be normal practice during the election Caretaker Period:
- (a) Public events will only be organized and run if it is totally unavoidable to conduct such events during the Caretaker Period and then only with the express permission of the Chief Executive Officer;
 - (b) Speeches for Councillors will only be prepared by Council staff in relation to events that are part of normal services or operation of the Council and such speeches will not be circulated or available for publication;
 - (c) Media services, including media releases, will not be provided to Councillors during the Caretaker Period;
 - (d) Media releases will not mention or quote any Councillor(s) during the Caretaker Period;
 - (e) All Council newsletters will not be printed by Council during the Caretaker Period; and
 - (f) Neither the Council logo nor Council stationery will be used by Councillors in any way that relates to the election.
- 8.11 Equipment and facilities provided to Councillors for the purpose of conducting normal Council business will not be used for campaigning purposes.
- (a) Where Councillors have Council funded services, such as mobile phones, land lines and internet connections, and where it is impractical for Councillors to discontinue their use of these during the election, Councillors will reimburse the Council for usage of those services during the Caretaker Period that exceeds normal usage levels.
 - (b) Councillors may wish to consider the specific ways to administer this procedure. For instance Councillors may decide to use a private phone for all election enquiries and publicise such number on election material.
 - (c) Councillors standing for re-election must not use Council equipment as a resource to assist with election campaigns. This includes photos or images provided by Council for past Council activities

9. Information

9.1 Candidates' Access to Information

All election candidates have equal rights to information relevant to their election campaigns from the Council administration. While it is important that sitting Councillors continue to receive information that is necessary to fulfill their existing elected roles, neither Councillors nor candidates will receive information or advice from Council officers that may improperly advantage candidates in the elections.

There will be complete transparency in the provision of all information and advice during the election Caretaker Period.

9.2 Information Request Register

An Information Request Register will be maintained by Corporate Services during the election Caretaker Period. This Register will be a public document that records all requests relating to electoral matters and non-routine requests for information by Councillors and candidates, and the responses given to those requests.

Responses to Councillors and candidates requests, as per clause 9.1 will be provided by the Chief Executive Officer or General Managers. Managers will be required to discuss the request and the proposed response with their General Manager prior to the response being provided.

Only Information that can reasonably be accessed will be released.

10. Improper Use of Position

- 10.1 Section 76D and 76E of the Act prescribes serious penalties for any Councillor who inappropriately makes use of their position or information obtained in the role of a Councillor, to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person or to cause, or attempt to cause, detriment to the Council or another person.

11. Assistance to Candidates

- 11.1 The Council affirms that all candidates for the Council election will be treated equally.
- 11.2 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 responsibility of the Returning Officer (such as the CEO list), to the Chief Executive Officer or a designated member of Council staff.
- 11.3 Council will provide candidates with a Councillor Candidate Information Kit to assist them in running and nominating for Council.
- 11.4 Candidates will be informed of their obligation to complete a Nomination Form which will be available from the "Returning Officer", accompanied by the nomination fee
- 11.5 Candidates will also be informed of the requirements to complete and submit an "Election Campaign Return" to the Chief Executive Officer within 60 days

after the Election Day. The return must contain details of any campaign donation or gift valued at more than \$500 which was received between 30 days after the previous election and 30 days after the current election.

12. Communication

- 12.1 Council communication will not be used in any way that might influence the outcome of a Council election.
- 12.2 During the election Caretaker Period, no employee will initiate any public statement that relates to an election issue. Public statements are not only formal press releases but also verbal comments at meetings, functions and events where attending as part of their Council role.
- 12.3 Any requests from Councillors for media advice or assistance during the election Caretaker Period will be channeled through the Chief Executive Officer.
- 12.4 In response to media enquiries the Chief Executive Officer, General Managers or the Media and Public Relations Team will only provide a response and such information should relate to current services and operations.
- 12.5 In the election Caretaker Period no media releases will be issued quoting or featuring any Councillor.
- 12.6 During the election Caretaker Period, Council initiated communications shall be restricted to communication of normal Council activities.
- 12.7 No media advice or assistance will be provided to Councillors in relation to election campaign matters.
- 12.8 No publicity will be provided that involves specific Councillors.
- 12.9 Councillors should not use their position as an elected representative or their access to Council staff and other Council resources or information in support of an election campaign. This includes photos or images provided by Council for past Council activities.
- 12.10 Contact with the local media will be restricted to the communication of normal Council activities and responding to questions not involving the election or possible election outcomes.
- 12.11 Publicity of Council events (if any during the election Caretaker Period) will be restricted to the communication of factual material and will not mention or quote any Councillor.
- 12.12 Councillor participation at Council sponsored events (if any during the election Caretaker Period) should not be used to gain attention in support of an election campaign. Council sponsored events includes launches, events, and any other public forum outside of the normal Council meeting cycle – the easiest way to deal with these is to simply not have them during the election Caretaker Period.

13. Council Publications

- 13.1 Section 55D of the Act places limitations on Council from printing, publishing or distributing 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..

This is to ensure that Council does not utilise public funds that may influence or be seen to influence people's voting intentions.

- 13.2 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. – it is an offence for the Chief Executive Officer to contravene this requirement.

- 13.3 Electoral matter is any matter that is intended or likely to affect voting in an election.

- 13.4 Despite section 98(2), certification by the Chief Executive Officer must be in writing and cannot be delegated. Certification wording – over the Chief Executive Officers signature – should be as follows: ***“Certified by the Chief Executive Officer in accordance with section 55D of the local Government Act 1989.”***

- 13.5 The interpretation of section 55D is extremely broad. Even though section 55D refers specifically to “an advertisement, handbill, pamphlet or notice” it has been interpreted to refer to documents produced for the purpose of communicating with the community, including:

- Council newsletters
- Advertisements and notices eg: job advertisements, public notices of contracts etc.
- Media releases
- Leaflets and brochures
- Mailouts to multiple addresses

All these publications will require certification by the Chief Executive Officer

Material is definitely electoral matter if it:

- Publicises the strength or weakness of a candidate
- Advocates the policies of the Council or of a candidate
- Responds to claims made by a candidate
- Publicises the achievements of the elected Council
- Publicises matters that have already been the subject of public debate
- About matters that are known to be contentious in the community and likely to be the subject of election debate
- Dealing with Election Candidates' statements
- Referring to Councillors or candidates by name or by implicit reference

- 13.6 Section 55D also applies to the publication of material specified in 13.5 (above) on Council's website. This applies to all websites under the auspice of Council. Any new pages on the website or new material will require certification by the Chief Executive Officer.

- 13.7 The recommended practice, in line with State and Federal Governments, is where possible; avoid all publication activity during the election Caretaker Period except where it is essential for the conduct of Council operations.
- 13.8 A number of Council publications with reference to either current Councillors or candidates, both on the website and public display will be withdrawn from display during the election Caretaker Period.
- 13.9 During the election Caretaker Period Council's website will not contain material which is precluded by this Policy or the statutory requirements relating to publications. Any references to the election will only relate to the election process.
- 13.10 Profiles of the current Mayor and Councillors will be removed from Council's website during the election Caretaker Period but retain their contact details for their day-to-day role as a Councillor i.e. names, photos and mobile phone numbers.
- 13.11 Any new material published on Council's website during the election caretaker period that may be considered to be an advertisement, handbill, pamphlet or notice must also be subject to the certification process.
- 13.12 Council is required by the Act to produce an annual report, and the annual report may be published during the election Caretaker Period. The annual report will not contain any material that could be regarded as overt electioneering or that inappropriately promotes individual Councillors but will fulfill its statutory obligations on reporting matters. In accordance with the requirements of section 134 of the Act, Council may be required to consider the annual report at a meeting of Council held during the election Caretaker Period.
- 13.13 Social media – any publication on social media sites such as facebook, twitter or Council blog sites that are under the auspice of Council will also require certification by the Chief Executive Officer.

Attachment 1

Relevant sections from the *Local Government Act 1989*

Section 3 (1) Election period (Caretaker Period)

In relation to an election, means the period that—

- (a) starts on the last day on which nominations or that election can be received; and
- (b) ends at 6 p.m. on election day;

Electoral advertisement, handbill, pamphlet or notice

means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting;

Publish

Means publish by any means including by publication on the Internet;

Section 3(1A) In this Act, “**electoral matter**” means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the returning officer for the purpose of conducting an election.

Note: **printed electoral matter** has the same meaning.

Section 3(1B) Without limiting the generality of the definition of “electoral matter”, matter is to be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on-

- (a) The election; or
- (b) A candidate in the election; or
- (c) An issue submitted to, or otherwise before, the voters in connection with the election.

Section 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.

Section 93A Conduct of Council during an 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 entitled to compensation from the Council for that 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 \$100,000 (or such higher amount as may be fixed by Order in Council under section 186(1)) or 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 Council’s revenue from rates and charges levied under section 158 in the preceding financial year.

Section 95 Conduct Principles

- (1) Council staff must in the course of their employment –
 - (a) act impartially;
 - (b) act with integrity including avoiding conflicts of interest;
 - (c) accept accountability for results; and
 - (d) provide responsive service.
- (2) Nothing in sub-section (1) (c) affects the granting of an indemnity to a member of Council staff in respect of any liability or limits the effect of –
 - (a) any such indemnity, whether granted before or after the commencement of section 67 of the *Local Government (Democratic Reform) Act 2003*; or
 - (b) any immunity conferred on a member of Council staff by or under any Act, whether before or after that commencement.

Attachment 2

Definitions

It should be noted that some of the terms used in this Policy are defined in the *Local Government Act 1989* (the Act) and their use in this Policy is consistent with the Act.

Caretaker Period has the same meaning as “election period” in section 3(1) of the Act, and means the period that starts on the entitlement date and ends at 6pm on Election Day.

Electoral advertisement, handbill, pamphlet or notice has the same meaning as section 3(1) of the Act, and means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting.

Electoral matter has the same meaning as electoral matter in section 3(1A) of the Act and means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the Returning Officer for the purposes of conducting an election.

Section 3(1B) of the Act further qualifies “electoral matter”.

“3(1B) Without limiting the generality of the definition of “electoral matter” matter is to be taken or be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on:

- (a) The election; or
- (b) A candidate in the election; or
- (c) An issue submitted to, or otherwise before, the voters in connection with the election.”

Major Policy Decision has the same meaning as section 93A of the Act and 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 \$100,000 (or such higher amount as may be fixed by Order in Council under section 186(1)) or 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 Council’s revenue from rates and charges levied under section 158 in the preceding financial year.

Pre-election Caretaker Period has the same meaning as “election period” in section 3(1) of the Act, and means the period that starts on the last day on which nominations for the election can be received and ends at 6pm on Election Day.

Printed electoral material has the same meaning as section 3(1) of the Act and means an advertisement, handbill, pamphlet or notice that contains electoral matter and is intended or calculated to affect the result of an election, and includes a how-to-vote card.

Public consultation is not defined in the Act, but in this context means a process which involves an invitation to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy, and includes discussion of that matter with the public.

Publish has the same meaning as section 3(1) of the Act, and means publish by any means including publication on the internet.

Significant Decision is not defined in the Act, but in this context means an irrevocable decision that significantly affects the municipality.

HUMAN RIGHTS

Wellington Shire Council is committed to upholding the Human Rights principles as outlined in the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* and referred to in Council's Human Rights Policy. The Human Rights Checklist has been completed and this policy accords with Council's policy commitment to uphold human rights principles.

Related Documents

Type:	Details:
Procedure	
General	Gifts and Donations Register Staff Code of Conduct Councillor Code of Conduct Human Rights Charter