



## 18.4 Election Period Policy

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## 1. INTRODUCTION

The *Local Government Act 1989* ('the Act') provides that during the 'election period' certain prohibitions apply to the general functions and powers of Council. It is during this time that Council enters the election period.

The 'election period' is defined by the Act as starting on the last day for nominations and ending at 6pm on the Election Day. The last day for nominations is the day that is 32 days before the Election day currently scheduled for 24 October 2020.

The 'election period' for the 2020 Local Government Elections will commence at midnight on 22 September 2020 and concludes at 6pm on Saturday 24 October 2020.

The policy replaces and overrides any previous policy or document that refers to the election or caretaker period.

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## 2. PURPOSE

The Election Period Policy has been developed in order to ensure that the general elections for the Colac Otway Shire on Saturday 24 October 2020\* and subsequent elections are conducted in a manner that is ethical, fair and equitable, and are publicly perceived as such.

*\*In 2020 Colac Otway Shire will be utilising postal voting which closes at 6.00pm Friday 23 October 2020.*

The Policy will also facilitate the continuation of the ordinary business of Local Government in the Colac Otway Shire throughout the election period in a responsible and transparent manner, in accordance with statutory requirements and established 'election period' conventions.

This Policy also commits Council during the election period to:

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

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## 3. DEFINITIONS

Where terms used in this Policy are defined in the Act, their use in this Policy is consistent with the definitions in the Act. Relevant sections of the Act are included in Attachment 1.

Definitions used in this Policy which are not defined by the Act are:

**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.

**Publication:** Includes any means of publication including letters and information on the internet and social media.



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

**Significant decision:** Means an irrevocable decision that significantly affects the municipality.

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#### 4. REFERENCES & RELATED DOCUMENTS

- Local Government Act 1989
- Victorian Electoral Act 2002
- Councillor Code of Conduct
- Election Period Procedures

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#### 5. GUIDELINES

Council will function in accordance with this Policy during the election period commencing at 12.01am on 22 September 2020 and ending at 6pm on 24 October 2020.

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##### 5.1. ROLE OF CHIEF EXECUTIVE

In addition to the Chief Executive's (CE) statutory responsibilities, the CE or his or her delegate will ensure as far as possible, that:

- All Councillors and Officers are informed of the application of this Policy 30 days prior to the commencement of the Election Period;
- Matters of Council business requiring major policy or significant decisions are scheduled for Council to enable resolution prior to the commencement of the election period, or deferred where appropriate for determination by the incoming Council; and
- Guidelines to staff on the role and responsibilities of staff in the implementation of this policy are issued, if appropriate.



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## 6. DECISIONS BY COUNCIL

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### 6.1. MAJOR POLICY DECISIONS

#### 6.1.1. DEFINITION

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**Major Policy Decision** is defined in section 93A (6) of the Act and means a decision:

- Relating to the employment of remuneration of a Chief Executive Officer (CEO), other than a decision to appoint an acting CEO;
- To terminate the appointment of CEO;
- 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.

To exercise any power under section 193 of the Act if the sum assessed under section 193 (5A) in respect of the proposed 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 year.

#### 6.1.2. PROHIBITION ON COUNCIL

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During the Election period, Section 93 of the Act prohibits Council making major policy decisions.

Any major policy decision made during the Election period is deemed to be invalid under the Act.

#### 6.1.3. EXTRAORDINARY CIRCUMSTANCES

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If Council considers that there are extraordinary circumstances where the Colac Otway Shire's community would be significantly disadvantaged by the Council not making a particular Major Policy Decision, the Council will, by resolution, request an exemption from the Minister for Local Government in accordance with section 93A (2) of the Act.

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### 6.2. SIGNIFICANT DECISIONS

During the Election period, Council will avoid making decisions that significantly affect the municipality and unreasonably bind the incoming Council.

Decisions to be avoided include but are not limited to:

- Allocating community grants
- Directing funding to community organisations
- Major planning scheme amendments
- Changes to strategies and strategic objectives in the Council Plan.



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## COUNCIL MEETINGS

Council meetings, including Ordinary Council, Statutory Planning and Special Council Meetings will not be held during the Election Period unless exceptional circumstances warrant it.

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### 6.3. COUNCIL AGENDA ITEMS

Should a Council meeting be required, papers prepared for the Council or Special Committee meetings will be carefully vetted to ensure that no agenda item is included that could potentially influence voters' intentions at the forthcoming election or could encourage councillor candidates to use the item as part of their electioneering.

Councillors will refrain from moving motions or raising matters at a meeting that could potentially influence voting at the election.

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## 7. PUBLIC CONSULTATION & EVENTS

Public consultation and scheduling of Council events during the election period will be limited.

Council events will not take place at all during the election period.

If consultation must be undertaken or an event held during this time, the council must justify to the community the special circumstances making it necessary and how the risks of influencing the election will be mitigated or prevented.

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### 7.1. STATUTORY REQUIREMENTS

The requirements of Clause 7 do not apply to public consultation required under the Planning and Environment Act 1987, or matters subject to section 223 of the Act.

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## 8. COUNCIL PUBLICATIONS

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### 8.1. PROHIBITION ON PUBLISHING MATERIAL DURING THE ELECTION PERIOD

Section 55D of the Act prohibits Council from printing, publishing or distributing any advertisement, handbill, pamphlet or notice during an election period unless it has been certified, in writing, by the CEO. This is to ensure that Council does not utilise public funds that may influence or be seen to influence people's voting intentions.

The CE must not intentionally or recklessly certify a publication that contains electoral matter, unless that material is only about the election process.



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## 8.2. CERTIFICATION OF PUBLICATIONS

Publications to be printed, published or distributed during the election period must first be certified by the CE.

The certification by the CE will be in writing on or affixed to a copy of the publication and be in the following form:

*'Certified by the Chief Executive in accordance with Section 55D of the Local Government Act 1989'*

Copies of all certified documents will be retained on Council records.

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## 8.3. PROHIBITED MATERIAL

Electoral matter is defined in the Act and means any 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 the election; or
- An advertisement in a newspaper announcing the holding of a meeting.

A publication is taken to contain electoral material if it contains an express or implicit reference to, or comment on:

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

Electoral matter includes material which:

- 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
- Publicises the achievements of the elected Council.

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## 8.4. COUNCIL PUBLICATIONS INCLUDING COUNCILLOR INFORMATION

Any reference to Councillors standing for re-election in Council publications printed, published or distributed during an election period must not include promotional text.

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## 8.5. WEBSITE

Material published on Council's website in advance of the election period is not subject to certification, however existing material that is prominently displayed will be reviewed and consideration given to the removal of any such material that would be considered electoral matter, were it to be published during the election period.

Councillor contact information will remain available on the website during the election period, but Councillor profiles will be removed.

Any material published on Council's website during the election period must be certified by the CE.



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## 8.6. ANNUAL REPORT

Council is required by the Act to produce and put on public display a copy of its Annual Report. The 2019-2020 Annual Report will be published during the election period. The Annual Report will not contain any material that could be regarded as overt electioneering or that inappropriately promotes individual Councillors.

The Annual Report does not require certification by the CE, however any publication of any extract or summary of the Annual Report will require certification.

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## 8.7. COUNCIL DOCUMENTS

Agenda papers and minutes of Council and Committee meetings do not require certification by the CE unless they are printed or published for a wider distribution than normal.

Items submitted for regular Council publications will be reviewed to ensure that they comply with the principles of the Act and this policy, and may be amended accordingly before publication.

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## 8.8. SOCIAL MEDIA

Any publication on Council-managed social media sites including but not limited to Facebook, Twitter and blogs during the election period must be certified by the CE.

Staff responsible for administering individual social media sites will monitor their respective sites during the election period and use moderation features where available to ensure no electoral matter is posted.

Councillor's individual (personal) social media pages are not managed by Council so are not subject to the same provisions.

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# 9. COUNCIL RESOURCES

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## 9.1. APPLICATION OF RESOURCES

It is an established democratic principle that public resources must not be used in any way that would influence the way people vote in elections, except in regard to supporting the actual election process.

The Council therefore commits to the principle that it will ensure that Council resources are not used inappropriately in an election period.

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



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## 9.2. ROLE OF OFFICERS

The Executive Officer to the CE, Mayor and Councillors, Governance staff, or any other staff member, will not be asked to undertake any tasks connected directly or indirectly with the election campaign of a Councillor standing for re-election.

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## 9.3. USE OF COUNCIL RESOURCES BY COUNCILLORS

Councillors may continue to use any Council equipment provided to them to facilitate their performance of normal Council duties, subject to existing protocols and terms of use. Councillors standing for re-election must not use Council equipment as a resource to assist with election campaigns.

Photocopying for election campaigning proposed by Councillors or staff on office photo copiers is not permitted.

Databases and mailing lists held by the organisation remain the property of the Council and are subject to the principles of the Privacy and Data Protection Act 2014 and are therefore not available to members of the public, candidates or Councillors.

The organisation will not prepare or produce any materials associated with Councillors' individual election campaigns.

No Council logos, letterheads or other Council branding should be used for, or linked in any way to, a candidate's election campaign.

Councillors will not use Council issued mobile phones and email addresses for election campaigning purposes.

The use of Council's internet or intranet sites for any activity to do with election campaigning is prohibited. This includes linking Council websites to private candidate websites.

Access to the voters' roll is subject to the requirements of the Act and Privacy and Data Protection legislation. A copy of the voters' roll will be provided to candidates by the Returning Officer. The voters' roll will be available for inspection during the election period at advertised times.

Council facilities booked for electoral campaigning purposes by Councillors, candidates or supporters or other persons during the election period will be let at the same rate to all hirers.

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## 9.4. OFFICER'S DISCRETION

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.

The organisation will continue to provide support to Councillors with respect to their day to day Council business. Where the use of Council resources appears to relate to the election campaign of a Councillor standing for re-election, the matter must be referred to the CE or his or her delegate.





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## 9.5. COUNCILLORS' ENTITLEMENT TO REIMBURSEMENT

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 support or are connected with the candidate's election campaign.

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## 10. MEDIA

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### 10.1. RESTRICTION ON SERVICES

Council's Communications services are intended to promote Council activities or initiatives and must not be used in any way that might favour a candidate. During the election period this team's service must not be used in any way that might promote a Councillor as an election candidate.

Council publicity during the election period will be restricted to communicating normal Council activities and initiatives and subject to certification by the CE.

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### 10.2. MEDIA RELEASES / SPOKESPERSONS

Media releases will minimise references to specific Councillors and will not identify any Councillor in a manner that could promote a Councillor as an election candidate. Where it is necessary to identify a spokesperson, the CE or his or her delegate will be consulted.

Media releases will require certification by the CE.

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### 10.3. COUNCILLORS

Councillors will not use their position as an elected representative or their access to Council Officers and other Council resources to gain media attention in support of an election campaign.

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### 10.4. COUNCIL EMPLOYEES

During the election period, no Council employee may make any public statement that relates to an election issue unless prior approval has been obtained by the CE or his or her delegate.

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## 11. INFORMATION

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### 11.1. CANDIDATES' ACCESS TO INFORMATION

All election candidates have equal rights to information relevant to their election campaigns and from the Council administration. While it is important that sitting Councillors continue to receive information that is necessary to fulfil their existing elected roles, neither Councillors nor candidates will receive information or advice from Council



officers that may improperly advantage candidates in the elections (which includes internal publications such as the weekly CE Update and Councillor Newsletter).

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

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#### 11.2. INFORMATION REQUEST REGISTER

Governance will maintain an Information Request Register during the election 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.

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#### 11.3. IMPROPER USE OF POSITION

Sections 76D and 76E of the Act prohibit Councillors from misusing or inappropriately making use of their position. A breach of section 76D attracts serious penalties, including possible imprisonment.

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### 12. ASSISTANCE TO CANDIDATES

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#### 12.1. ROLE OF RETURNING OFFICER

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 CE or his or her delegate.

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#### 12.2. CANDIDATE INFORMATION

Council will provide candidates with a Councillor Candidate Information Kit to assist them in running and nominating for Council. This will include an outline of meeting dates and times for the first four weeks of Council meetings and Councillor Induction workshops.

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 of \$250.

Candidates will also be informed of the requirements to complete and submit an 'Election Campaign Return' to the CE 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.



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### 13. FILE MANAGEMENT

<b>Policy owner</b>	Governance & Communications	<b>Division</b>	Executive
<b>Adopted by council</b>	July 2019	<b>Policy Number</b>	18.4
<b>File Number</b>	F19/7224	<b>Review date</b>	2023 or sooner if required