

ELECTION PERIOD POLICY

1.0 Purpose

The purpose of this Election Period Policy is to ensure that the ordinary business of local government in the City of Ballarat continues throughout the Election Period in a responsible and transparent manner and in accordance with statutory requirements and established 'caretaker' practices. This policy complements the commitments contained in the City of Ballarat Councillor Code of Conduct.

This policy assists Council to:

- Establish guidelines, protocols, procedures and practices that ensure that general elections for the Ballarat City Council to be held on the last Saturday in October every 4 years are conducted in a manner that is ethical, fair and equitable, and is publicly perceived as such.
- Prevent Council and Special Committees from making inappropriate decisions during the Election Period before a general election.
- Ensure that no actions or decisions could be perceived as intended to affect the results of an election are made.
- 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.
- Limit public consultation and the scheduling of Council events.
- Ensure that information held by City of Ballarat is made equally available and accessible to candidates during the election.

2.0 Scope

In the lead up to a general election, the Local Government sector adopts a caretaker period to avoid actions and decisions that may be interpreted as inappropriate nor will it make inappropriate use of resources during the election period that appear to influence voters or bind an incoming Council.

The Election Period (or caretaker period) commences from the last day that nominations to be a candidate for that election can be received and ends at 6pm on Election day (32 days). During the Election Period, Council will be deemed to be in 'election caretaker mode'.

There are specific caretaker provisions in the *Local Government Act 1989* (the Act) that Councils must implement during the Election Period. These include limits on Council publications, public consultation, the scheduling of Council events, and prohibitions on certain types of decisions. (Refer sections 55D, 93A and 93B of the Act.)

The provisions in this policy apply throughout the election Period unless otherwise stated.

This policy has been written to provide a guide only for Councillors, candidates, Special Committee members and Council officers and is not a substitute for legal advice. Individuals should seek their own independent advice if they are unsure about any aspect of the *Local Government Act 1989* in relation to the Election Period.

3.0 Policy Statement

3.1 Council Business

The Chief Executive Officer must ensure as far as possible that:

- No later than 30 days prior to the commencement of the Election Period, the Chief Executive Officer will ensure that:
 - all Councillors, Managers and Council officers are informed of the requirements and application of this policy; and
 - a copy of this policy is given to all Councillors.
- Matters of Council business requiring significant decisions are scheduled for Council to consider prior to the commencement of the election period, or deferred where appropriate for determination by the incoming Council.
- All Candidates are familiar with the policy.

3.2 Major Policy Decisions

During the election period, section 93A of the Act prohibits Council and Special Committees from making a major policy decision.

If Council considers that there are extraordinary circumstances where the Ballarat and wider community would be significantly disadvantaged by Council not making a particular major policy decision, Council will, by resolution, request an exemption from the Minister for Local Government in accordance with section 93A (2) of the Act. The request for exemption is not automatically granted.

3.2.1 Inappropriate Decisions

During the Election Period, Council will follow procedures to prevent inappropriate decisions as defined under section 93B of the Act. Inappropriate decisions are those that would affect voting at an election or decisions that may unreasonably bind an incoming Council and could reasonably be deferred until after the election.

All documentation prepared for Council or Special Committee meetings will be carefully vetted by the Chief Executive Officer to ensure that no agenda item is included that could potentially influence voters' intentions at the general election or could encourage Councillor candidates to use the item as part of their electioneering.

3.2.2 Significant Decisions

In addition to the decisions specified in sections 93A and 93B of the Act, the Council and Special Committees will avoid making other decisions during the Election Period that are of a significant nature.

Council acknowledges that it has an ongoing responsibility to act in the best interests of the community. Where a delay in making a "significant decision" would result in significant detriment to the local community, or the broader community, Council may make an exception to this procedure where the issue:

- a) Is urgent; and
- b) Cannot be reasonably deferred without major negative repercussions; and where
- c) The decision is significant; and
- d) The decision relates to the completion of an activity already undertaken and endorsed by Council eg. via the Budget, Council Plan or long-term strategies or policies but does not meet the definition of 'major policy' in the Act.

It is the responsibility of the Chief Executive Officer to determine if a matter is significant and if it is urgent.

3.2.3 Business at Council and Special Committee meetings

Council and Special Committee meeting papers will be reviewed to ensure that no agenda item is included that could potentially influence voters' decision at the election or give rise to a prohibited major decision or inappropriate decision.

3.3 Public consultation

Public consultation is an integral part of Council's policy development process and operations. During the Election Period, however, Council will undertake procedures to limit this consultation to reduce the perception that this may influence voting. Councillors acknowledge that issues raised through the consultation, and decisions that follow, may also unreasonably bind the incoming Council.

No public consultation will be undertaken during the Election Period unless authorised by a Council decision that acknowledges the application of this policy and justifies to the Ballarat community the special circumstances making it necessary and how the risks of influencing the election will be mitigated or prevented.

There will be no Public Question and Submission Time during the Election Period.

3.4 Council Resources

Public resources must not be used in a manner that would influence the way people vote in elections. Council will ensure that Council resources are not used inappropriately during a Council election and to comply with the requirements of section 55D of the Act.

Council resources, including offices, Council officers, hospitality services, equipment, electronic equipment and stationery will be **used exclusively for normal Council business** during the Election Period, and will not be used in connection with any electioneering activity.

Equipment and facilities provided to Councillors for the purpose of conducting normal Council business will not be used for campaigning purposes.

3.5 Council Information

Information and briefing material prepared by Council officers for Councillors during the Election Period will relate only to factual matters or to existing Council services to assist Councillors in conducting normal day to day activities.

Access to historical briefings and workshop papers will be suspended for the duration of the Election Period.

An **Information Request Register** will be established by the Executive Manager, Safety, Risk and Compliance and maintained by the Statutory Compliance unit, commencing on the 1st day of the Election Period. This register will be a public document (available for inspection) that records all requests for information **by all candidates**, and the responses given to those requests.

Responses to candidates' requests will only be provided by Managers, Executive Managers, Directors or the Chief Executive Officer.

Section 76D of the Act prescribes serious penalties for any Councillor who inappropriately makes use of their position or information obtained in the role of Councillor, to gain an advantage.

3.6 Council Communication

Council communication **will not be used in any way** that might influence the outcome of a Council election.

Publicity of Council events will be restricted to the communication of normal Council activities.

Media inquiries regarding the election or possible election outcomes will only be responded to by the Chief Executive Officer or the Manager, Communications and Marketing.

In the Election Period no media releases will be issued quoting or featuring the Councillor(s). When issued, these will be concern themselves with facts only.

Councillor correspondence will be managed in the usual process. Correspondence addressed to councillors will not be responded to regarding any election matter during Election Period. All correspondence responded to by councillors will not reference any election matter and will be restricted to normal council business.

3.7 Council Publications

Section 55D of the Act places limitations on Council from printing, publishing or distributing publications during the Election Period. This is to ensure that Council does not utilise public funds that may influence, or be seen to influence, people's voting intentions.

Council must not print, publish or distribute a publication during the Election Period **unless** it has been certified in writing by the Chief Executive Officer. The Chief Executive Officer **must not certify** a publication that contains electoral matter – it is an offence, under section 55D of the Act, for the Chief Executive Officer to contravene this requirement.

Section 55D also applies to the publication of material specified in clause 9.6 on Council's website. During the Election 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. Profiles of the current Mayor and Councillors will be removed from Council's website during the Election Period but retain their contact details for their day-to-day role as Councillor.

Any new material published on Council's website during the Election Period that **may** be considered to be an advertisement, handbill, pamphlet or notice must also be subject to the certification process. Council agendas, minutes and the annual report are considered exempt from certification.

The Annual Report will be compiled during the Election Period and will not contain any material that could be regarded as electioneering or that inappropriately promotes individual Councillors. Information about Councillors will be restricted to names, contact details, titles, membership of Special Committees and other bodies to which they have been appointed by the Council.

Council's newsletter 'myballarat' will not be produced or distributed during the Election Period.

Any publication of comments or new content on social media sites that are managed by Council must be certified by the Chief Executive Officer during the Election Period. At the commencement of the Election Period, Council will advise social media subscribers that comments containing electoral matter will be deleted.

3.8 Council Events

During the Election Period, Council will undertake procedures to limit the scheduling of Council events during this period. Councillors acknowledge that the scheduling of Council events in the lead up to elections may raise concerns over their potential use by sitting Councillors for electioneering purposes.

No Council event will be scheduled during the Election Period unless authorised by a Council decision that acknowledges the application of this Policy and justifies to the Ballarat community the special circumstances making it necessary and how the risks of influencing the election will be mitigated or prevented.

Councillors should refrain from delivering speeches or keynote addresses at Council-organised or sponsored events and functions during the Election Period other than protocol speeches, such as short welcome and thank you speeches.

Any speech or address should have prior approval of the Chief Executive Officer or Manager Communications and Marketing. Councillors may continue to attend events and functions which are staged by external organisations during the Election Period.

3.9 Assistance to Candidates

The Council affirms that all candidates for the Council election will be treated equally, fairly and without discrimination. Any assistance, information and advice to be provided to candidates as part of the conduct of the Council election will be provided and made accessible equally to all candidates.

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 Council Officer.

3.10 Electoral Signs

Councillors and prospective candidates must comply with City of Ballarat Community Local Law 2017 for the placement of advertising / electoral signs within the City of Ballarat municipality.

4.0 Supporting documents and references

4.1 Legislation

- *Local Government Act 1989*
- *Privacy and Data Protection Act 2014*
- *Freedom of Information Act 1982*

4.2 Associated Documents

- *Councillor Code of Conduct*
- *Committees Policy*

4.3 Definitions

Act	<i>Local Government Act 1989</i>
Candidate	A person who has nominated themselves with the Victorian Electoral Commission and is seeking election as a councillor.
CEO	Chief Executive Officer
Council Events	Gatherings of internal and external stakeholders organised and run by the City to discuss, review, acknowledge, communicate, celebrate or promote a program, strategy or issue, which is of relevance to the Council and its community including those which may take the form of

conferences, workshops, forums, launches, promotional activities social occasions such as dinners, receptions and balls.

Election Period

The election period (or caretaker period) commencing at midnight Tuesday 22 September, 2020 and continuing until 6pm Saturday October 24, 2020, a period of 32 days.

Major Policy Decisions

In the context of this policy, a ‘Major Policy’ decision as defined in Section 93A (6) of the Act 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; and
- (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.

Public Consultation

A process which involves an invitation or invitations to individuals, groups or 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.

Regulations

Local Government (General) Regulations 2015

Significant Decision

Other decisions during the Election Period that are of significant nature and which would unnecessarily bind an incoming Council. These include:

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

5.0 Policy owner

Chief Executive Officer.

6.0 Authorisation

Adopted by Ballarat City Council, 30 October 2019. R287/19.