



Election Period Policy

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Responsible Officer	Manager Legal and Governance
Policy owner	Governance Coordinator

1. Purpose

To satisfy section 93B of the *Local Government Act 1989* (the '1989 Act'), and section 69 of the *Local Government Act 2020* (the '2020 Act') which require Council to prepare, adopt and maintain an Election Period Policy which must address certain matters.

2. Scope

All Melton City Council Councillors, employees, contractors, consultants and volunteers, and applicable only during the statutory election period.

3. Application of Policy

The election period (or caretaker period) for the 2020 local government general elections commences at noon on Tuesday 22 September 2020 and ends at 6.00pm on Saturday 24 October 2020.

The Chief Executive Officer is responsible for the application of the policy across Melton City Council.

4. Definitions

Word/Term	Definition
the 2020 Act	means the <i>Local Government Act 2020</i> .
the 1989 Act	means the <i>Local Government Act 1989</i> .
Caretaker Period	has the same meaning as 'Election Period'.
Council Information	means any communication or material containing facts, data or material about the Council and its products, services, processes or functions.
Council resources	means human, material and financial resources of Council, including but not limited to, Council office and works spaces, staff (fulltime, part time, casual, contract) and volunteers, hospitality services, equipment and stationery used for normal Council business.

Word/Term	Definition
Delegation	means the giving of decision-making power(s) by instrument of a function, duty or power under any Act, where such delegation is allowed by law.
Election Period	has the same meaning as in section 3(1) of the 2020 Act and, in relation to an election, means the period that— <ul style="list-style-type: none"> (a) starts at the time that nominations close on nomination day; and (b) ends at 6 p.m. on election day
Electoral Matter	has the same meaning as in sections 3(4) of the 2020 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 election manager for the purposes of conducting an election; <p>and</p> <p>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—</p> <ul style="list-style-type: none"> (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
Event	means gatherings of internal and/or external stakeholders to discuss, review, acknowledge, communicate, celebrate or promote a program, strategy or issue that is of relevance to the Council and its community and may take the form of conferences, workshops, forums, launches, promotional activities, social occasions such as dinners, receptions and balls.
Function	has the same meaning as ‘Event’ as defined in this policy.
Inappropriate Decision	means any decision: <ul style="list-style-type: none"> (a) that would enable the use of Council's resources in a way that is intended to influence, or is likely to influence, voting at the election (refer s69(3) of the 2020 Act) (b) the Council considers could be reasonably deferred until the next Council is in place (refer s69(2)(c) of the 2020 Act) (c) the Council considers should not be made during an election period (refer s69(2)(d) of the 2020 Act)
Major Policy Decision	means any decision: <ul style="list-style-type: none"> (a) relates to the appointment or remuneration of the Chief Executive Officer but not to the appointment or remuneration of an Acting Chief Executive Officer (refer s69(2)(a) of the 2020 Act)

Word/Term	Definition
	(b) regarding the entering into a contract the total value of which exceeds \$100,000.
Publications	<p>means:</p> <ul style="list-style-type: none"> • brochures, pamphlets, handbills, flyers, magazines and books • reports (other than Agenda papers and Minutes) • advertisements and notices, except newspaper notices of meetings • new website material • social media • emails with multiple addresses, used for broad communication with the community • bulk mail outs or identical letters sent to a large number of people by or on behalf of Council • media releases • material to publicise a function or event • Councillor speeches.
Public consultation	means a process that involves inviting stakeholders (individuals, groups, organisations or the public generally) to comment on an issue or proposed action or proposed policy, and which includes discussion of the matter with the public.
Significant decision	<p>means any decision:</p> <p>(a) that may irrevocably commit the incoming Council to substantial expenditure or to other significant actions; and</p> <p>(b) that may have an irrevocable and/or significant impact on the municipality or a significant section of the community.</p>
Social media	includes, but is not limited to: Facebook, Twitter, YouTube, Flickr, LinkedIn, Pinterest, Snapchat, Instagram, TikTok accounts but does not include the private and individual social media accounts of any candidate or Chief Executive Officer or staff member.
Delegated Committee	<p>has the same meaning as in s3(1) of the 2020 Act and means—</p> <ul style="list-style-type: none"> (a) a delegated committee established by a Council under section 63; or (b) a joint delegated committee established by 2 or more Councils under section 64; or (c) a committee, other than a Community Asset Committee, exercising any power of a Council under this Act or any other Act delegated to the committee under this Act or any other Act;

5. Policy

5.1 Council Decision Making

5.1.1 *Major Policy Decisions*

The Council, a Delegated Committee or a person acting under a Delegation given by the Council **must not** make a **Major Policy Decision** during the election period.

If the Council considers that there are extraordinary circumstances where the municipality or the local 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 177 of the 2020 Act.

Any person who is in any doubt as to whether or not a decision is a Major Policy Decision should consult with the Chief Executive Officer.

The Chief Executive Officer will:

- (a) ensure that no Council Report goes to Council during the election period in relation to a Major Policy Decision; and/or
- (b) give a decision to any staff member in relation to whether or not the proposed decision amounts to a Major Policy Decision.

The Chief Executive Officer's decision will be final.

A Major Policy Decision made in contravention of this Policy is invalid (refer s69(4)) and any person who suffers any loss or damage as a result of acting in good faith on a Council decision that is invalid by virtue of subsection (4) is entitled to compensation from the Council for that loss or damage (refer s69(5)).

It will be the ultimate responsibility of the Chief Executive Officer to determine if a matter is a major policy decision. Where possible, the Chief Executive Officer will ensure that matters are scheduled for Council to ensure that 'major policy decisions' are resolved prior to the commencement of the election period or scheduled for determination by the incoming Council.

5.1.2 *Inappropriate Decisions*

The Council, a Delegated Committee or a person acting under a Delegation given by the Council **must not** make an **Inappropriate Decision** during the election period.

Decisions that bind an incoming Council which could reasonably be made after an election, or would affect voting in an election must be avoided.

Any person who is in any doubt as to whether or not a decision is an Inappropriate Decision should consult with the relevant General Manager in the first instance and thereafter the Chief Executive Officer, whose decision on the matter will be final.

The relevant General Manager will:

- (a) ensure that no Council Report goes to Council during the election period in relation to an Inappropriate Decision; and/or
- (b) give a decision to any staff member in relation to whether or not the proposed decision amounts to an Inappropriate Decision.
- (c) refer any proposed decision in relation to which the General Manager is in any doubt amounts to an Inappropriate Decision to the Chief Executive Officer whose decision will be final.

5.1.3 Significant Decisions

The Council, a Delegated Committee or a person acting under a Delegation given by the Council **should not** make a **Significant Decision** during the election period.

The Council will however, allow an exception to this principle where:

- (a) the delay in making a 'significant decision' would have a negative impact on the Council, or result in significant detriment to the local or broader community
- (b) result in a breach of a statutory timeframe within which a matter is to be considered and resolved upon
- (c) where the disadvantage of not making the decision exceeds the benefits of complying with the principle.

In deciding with (a), (b) or (c), the Council will deal with the matter impartially, having regard to the long term interests of the community and as transparently as possible.

The Chief Executive Officer will:

- (a) ensure that any Council Report that contains a Significant Decision during the election period will clearly identify such decision in the report as being a Significant Decision.
- (b) give a decision to any staff member in relation to whether or not the proposed decision amounts to a Significant Decision. The Chief Executive Officer's decision will be final.

5.2 Prohibition on Publishing Material

Section 304(2) of the 2020 Act prohibits a Councillor or member of Council staff from printing, publishing or distributing; or to cause, permit or authorise others to print, publish or distribute any electoral material during the election period by or on behalf of Council unless the electoral material only contains information about the election process or is otherwise required by any Act or regulation.

A breach of this section of the 2020 Act is an offence.

5.2.1 Prohibited Material

Electoral matter is defined in the 2020 Act (refer s3(4) and s3(5)) 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 Election Manager for the purposes of conducting an election.

Material is electoral matter if it expressly or implicitly:

- refers to or comments on the election, a candidate for the election or an issue before the voters in connection with an election.
- publicises the strength 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
- publicises matters that have already been the subject of public debate
- is about matters that are known to be contentious in the community and likely to be the subject of election debate
- deals with Election Candidates statements
- refers to Councillors or candidates by name or by implicit reference.

5.2.2 Council Publications – Certification

All publications to be printed, published or distributed during the election period must be certified by the Chief Executive Officer, processed through Council’s Enterprise Content Management System (ECM) for record management purposes. See **Attachment 1**.

The certification by the Chief Executive Officer will be recorded in ECM notes in the Customer Action Request (CAR) webform, and be in the following form:

‘Certified by the Chief Executive Officer in accordance with the Election Period Policy’.

In considering whether to grant approval for the publication of materials during an election period, in accordance with the provisions of the 2020 Act, the Chief Executive Officer:

- (a) must not permit materials to be published which includes an express or implicit reference to, or comment on:
 - (i) the election
 - (ii) a candidate in the election
 - (iii) an issue submitted to, or otherwise before, the voters in connection with the election.
- (b) may approve publication of material which only contains information about:
 - (i) the election process itself
 - (ii) Council information that does not include any reference to a current Councillor otherwise precluded by this policy.

5.2.3 Council Agendas and Reports

Information and briefing material prepared by staff for Councillors during the election period will relate only to factual matters or to existing Council policies and services.

Such information will not relate to new 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.

Items submitted for Public Question Time will be reviewed to ensure that they comply with the principles of the 2020 Act and this Policy.

‘Caretaker Statement’

During the election period, the Chief Executive Officer will ensure that a ‘caretaker statement’ is included in every report submitted to the Council or a Delegated Committee for a decision.

The ‘Caretaker Statement’ will specify one or more of the following:

- (1) *‘The recommended decision is not a ‘Major Policy Decision’ or ‘Inappropriate Decision’ or ‘Significant Decision’ within the meaning of Council’s Election Period Policy.’*
- (2) *‘The recommended decision is not a ‘Major Policy Decision’ as defined in Council’s Election Period Policy. The recommended decision is a ‘Significant Decision’ within the meaning of the Council’s Election Period Policy but an exception should be made for the following reasons (insert reasons for making an exception).....’*
- (3) *‘The recommended decision is to seek an exemption from the Minister because the matter is a ‘Major Policy Decision’ as defined in Council’s Election Period Policy.’*

(4) 'The recommended decision is a 'Major Policy Decision' as defined in Council's Election Period Policy, but an extraordinary circumstances exemption was granted by the Minister for Local Government on (insert date).'

During an election period, the Council will not make a decision on any matter or report that does not include one of the caretaker statements.

5.2.4 Annual Report

Council is required by the 1989 Act to prepare and put on public display its Annual Report. The Council's 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.

5.2.5 Council 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, as if it were published during the election period.

Councillor photos and contact information will remain available on the website during the caretaker period, but Councillors' profiles will be removed.

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

The Annual Report does not require certification by the Chief Executive Officer however; any publication of an extract or summary of the Annual Report will require certification.

An election period statement will be placed on Council's website advising that it will not be updating or adding new information to the website during the election period other than necessary operational information.

5.2.6 Social Media

Any content published on Council social media sites during the election period must be certified by the Chief Executive Officer.

Content generated by Council Officers is to be kept to the minimum level assessed to mitigate the loss of any readership or subscription to the social media account.

Content must not include Prohibited Material as defined under 5.2.1 of this policy.

Social media accounts that allow third party generated content to be disabled **must** disable that functionality for the election period.

Where not possible, *prohibited content* published by third parties must be deleted as soon as practical, and consideration given to the temporary suspension of the social media account during the election period.

An election period statement will be placed on Council's social media accounts advising that it will not be updating or adding new information to these accounts during the election period other than necessary operational information.

5.3 Public Consultations

Public consultation is to be avoided where possible during the election period. Whilst some public consultation activities may be necessary during the election period to facilitate the day to day business of Council and ensure matters continue to be proactively managed, any such public consultation activities will avoid express or implicit links to the election.

5.3.1 Postpone public consultation

If there is the potential for a matter or issue to become contentious or politically sensitive in the course of the election period, Council reserves the right to postpone a matter if the issue is likely to affect voting.

5.3.2 Approval to conduct public consultation

The Chief Executive Officer may approve public consultation occurring during the election period, but will first consider:

- (a) whether the consultation process is likely to be controversial
- (b) whether the consultation process is significant
- (c) whether the consultation process can be deferred until after the election
- (d) the financial implications if the consultation was made during the caretaker period or deferred until after the election
- (e) the best interests of the community.

The requirements of clause 5.3.2 do not apply to public consultation required under the *Planning and Environment Act 1987*, or matters subject to section 223 of the 1989 Act.

5.4 Attendance at Functions and Events

5.4.1 Public events staged by external bodies

Councillors may continue to attend events and functions during the election period where necessary. Councillors must not use appearances at public events for the purposes of electioneering and are not to formerly speak at these events unless expressly authorised by the Chief Executive Officer. Where this express authorisation has been given any speech must be approved by the Chief Executive Officer in accordance with 5.2.2 above and 5.4.3 below.

5.4.2 Council Functions and Events

Council organised events and functions held during the election period will be reduced to only those essential to the operation of the Council.

Councillors may continue to attend Council events and functions during the election period.

5.4.3 Speeches and Keynote addresses

Councillors may make speeches at Council organised or sponsored events and functions during the election period subject to approval of the Chief Executive Officer. Any speeches to be delivered by a Councillor during the election period must be written by Council staff under the direction of the CEO and approved in accordance with 5.2.2. The Councillor Speaking Opportunity Protocol continues to apply during the election period.

5.5 Access to Council 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 fulfil their elected roles, neither Councillors nor candidates will receive information or advice from Council staff that might be perceived to support election campaigns. Transparency will be observed and practised in the provision of all information and advice during the election period.

5.5.1 Information Requests

The Governance Team will maintain an 'Information Request Register' during the election period for all requests relating to electoral matters and non-routine requests for information from election candidates, including incumbent Councillors. See **Attachment 2**.

- (a) All initial requests for information must be directed through the responsible General Manager who will maintain a 'Register of Requests' made and advice provided. See **Attachment 3**.
- (b) The Register of Requests will then be forwarded to the Governance Team at the end of each week during the election period.
- (c) The Information Request Register will contain the Register of Requests maintained by the three relevant General Managers and will be retained by the Governance Team during the election period.
- (d) The Information Request Register will be a public document that contains all requests for information by Councillors and candidates, and the responses given to those requests.
- (e) The Information Request Register will be accessible on Council's website with updates to the website on a weekly basis; in line with Section 5.5.1(b) above.

5.5.2 *Improper Use of Position*

Sections 76D and 76E of the 1989 Act prohibit Councillors from misusing or inappropriately making use of their position. These provisions apply at all times, not only during the election period however the risk of a breach of these provisions may be greater during an election period.

The 2020 Act contains similar provisions (Misuse of position) which commence on 24 October 2020, replacing the above provisions.

A breach of section 76D attracts serious penalties, including possible imprisonment.

5.6 Role of the Election Manager

All election related enquiries from candidates, whether sitting Councillors or not, will be directed to the Election Manager or, where the matter is outside the responsibilities of the Election Manager, to the Chief Executive Officer.

5.7 Media Services

5.7.1 *Restriction on services*

Council's Communications team undertake the promotion of Council activities and initiatives.

During the election period this team's services 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 Chief Executive Officer.

5.7.2 *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 Chief Executive Officer will be consulted.

All media releases will require certification by the Chief Executive Officer.

5.7.3 *Media Enquiries and Responses*

All media enquiries are to be directed to the Communications team.

All responses to media enquiries will require certification by the Chief Executive Officer.

5.7.4 *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.

5.7.5 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 Chief Executive Officer. Any public statement must be approved by the Chief Executive Officer in accordance with 5.2.2.

5.8 Council Resources

Public resources are not to be used inappropriately during a Council election, except in regard to supporting the actual election process.

It is an offence for a Councillor or member of staff to use Council resources in a way that is intended to or is likely to affect the result of the election (refer to s304(1) of the 2020 Act).

5.8.1 Prior to the election period, the Chief Executive Officer will ensure that all members of Council staff are advised in regard to the application of the Election Period Policy.

- (1) Council staff will not undertake an activity, or assist Councillors in a way that could create a perception that they are being used for electoral purposes, or which may affect voting in the election, except where it only relates to the election process and is authorised by the Chief Executive Officer.
- (2) The Personal Assistant to the Mayor and Councillors and Administrative Support Officers or any other Council staff member will not be asked to undertake any tasks connected directly or indirectly with electioneering.
- (3) Any Council employee who considers that a particular use of Council resources may influence voting in an election or provide an undue advantage for a candidate should advise their immediate supervisor before authorising, using or allocating the resource. The Manager will seek appropriate advice in order to ascertain whether the use of Council resources is in accordance with this policy.

5.8.2 In applying these principles, the Council understands that the following will be the normal practice during the election period:

- (1) Council resources, including offices, support staff, hospitality services, equipment and stationery will be used exclusively for normal Council business during the election period, and will not be used for the personal advantage of any Councillor or candidate in connection with any election. This does not apply to the provision of office space for the Victorian Electoral Commission (VEC) Election Manager within in a Melton City Council building.
- (2) Councillor newsletters will not be resourced by the Council in any way during the election period.
- (3) Speeches for Councillors will only be prepared by Council staff in relation to events that are part of the normal services or operation of the Council and such speeches will not be circulated or available for publication.
- (4) No Council logos, letterheads, or other Melton City Council branding will be used for, or linked in any way to a candidate's election campaign.
- (5) Reimbursements of Councillor's 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 could be perceived as supporting or being connected with a candidate's election campaign.
- (6) Facilities, services and equipment provided to, or made available to Councillors for the purpose of conducting normal Council business, must not be used for election

campaigning purposes. These include telephones, office equipment, council email address and social media handles.

5.8.3 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.

6. Responsibility /Accountability

6.1	<p>Councillors</p> <p>Councillors are to ensure that they:</p> <ul style="list-style-type: none"> • understand and comply with the provisions in this policy • direct any enquiries or requests for information to the Chief Executive Officer.
6.2	<p>Council employees/Contractors/Consultants/Volunteers</p> <p>All Council employees, contractors, consultant and volunteers will:</p> <ul style="list-style-type: none"> • understand and comply with the provisions of this policy in the conduct of their duties • report any activities or conduct that has, or may be perceived as breaching this policy to their immediate Manager/General Manager.
6.3	<p>Coordinators and Managers</p> <p>Coordinators and Managers will ensure:</p> <ul style="list-style-type: none"> • that staff are aware of the provisions of this policy • that all reports of activities or conduct that has, or may be perceived as breaching this policy is taken seriously, and reported to the relevant General Manager for review.
6.4	<p>Governance Coordinator and Manager Legal and Governance</p> <p>The Governance Coordinator and Manager Legal and Governance are responsible for:</p> <ul style="list-style-type: none"> • the review and administration of this policy • preparation and maintenance of an 'Information Request Register' in accordance with section 5.5.1(c) of this policy • posting the Information Request Register on Council's website in accordance with section 5.5.1(e) of this policy
6.5	<p>General Managers</p> <p>General Managers are responsible for:</p> <ul style="list-style-type: none"> • the operational administration of this policy • preparation and maintenance of a weekly 'Register of Requests' in accordance with section 5.5.1(a) • the review of any reports of activities or conduct that has, or may be perceived as breaching this policy, inclusive of any immediate action.
6.6	<p>Chief Executive Officer</p> <p>In addition to their statutory responsibilities, the Chief Executive Officer will ensure as far as practicable that:</p> <ul style="list-style-type: none"> • all Councillors and Officers are informed of the application of this policy at least 60 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 ('caretaker period'), or deferred where appropriate for determination by the incoming Council • the policy and additional guidelines, if appropriate, are made available to staff outlining their role and responsibilities in the implementation of this policy.

7. References and links to legislation and other documents

Name	Location
<i>Local Government Act 2020 (Vic)</i>	www.legislation.vic.gov.au
<i>Local Government Act 1989 (Vic)</i>	www.legislation.vic.gov.au
Code of Conduct (Councillors)	Governance Intranet Site and Council website
Code of Conduct (Employees)	Governance Intranet Site

5.2.2 Council Publications – Certification



