

▶ ELECTION PERIOD 2016 CARETAKER POLICY

POLICY NUMBER:	66 (C)
NAME OF POLICY:	ELECTION PERIOD 2016 CARETAKER POLICY
DATE OF NEXT REVIEW:	September 2019
DATE APPROVED:	15 March 2016
RESPONSIBLE OFFICER:	General Manager Corporate Services
REFERENCES:	<i>Local Government Act 1989</i> <i>Local Government Amendment (Improved Governance) Act 2015</i>

Best Value Principles

Hepburn Shire Council has the responsibility to provide its ratepayers with best value, with all services provided by Council meeting the expectations in terms of quality and cost. In providing this, all services need to be accessible, responsive to the needs of the community, considerate of the natural environment and subject to continuous improvement.

To achieve the best over life outcome for Council's expenditures, which meets quality and service expectations, there will be periodic review of services against best on offer in both the public and private sectors.

All Council staff members are responsible for supporting best value principles in their normal day to day actions to ensure services are recognised by the community as delivering best value.

INTRODUCTION

The Hepburn Shire Council is committed to good governance and to fair and democratic elections and therefore adopts and endorses the following caretaker policy to apply during the 2016 election period.

The purpose of Council's caretaker policy is to ensure that the ordinary business of local Government at Hepburn Shire Council continues throughout the election period in a responsible and transparent manner, in accordance with statutory requirements and established "caretaker" conventions. The policy sets out how Council will:

- avoid making decisions which would affect voting in the election or could reasonably be made after the election;
- not use resources inappropriately during the election period prior to the election;
- limit public consultation and the scheduling of Council events;
- ensure that access to information held by Council is made equally available and accessible to all candidates during the election.

SCOPE

This policy applies to councillors, 2016 election candidates and staff of Hepburn Shire Council up to and during the election period.

POLICY

1. Election Period

The Local Government Act 1989 ("the Act") Section 3(1) defines the election period to be the period that:

- starts on the last day on which nominations for that election can be received; and
- ends at 6 pm on election day.

For the 2016 general election, the election period will be:

- **from the commencement of Tuesday 20 September 2016**
- **until 6:00pm on Saturday 21 October 2016**

2. Decision Making

It is an established democratic principle that elected bodies should not unnecessarily bind an incoming government during an election period. The Council therefore commits to the principle that it will make every endeavour to avoid making significant decisions that bind an incoming Council. This includes a commitment to comply with the requirements of section 93A of the Act relating to “major policy decisions”, as well as not making decisions which could affect the election or could be made after the election period.

a. Major Policy Decisions

Section 93A of the Act prohibits the Council, a Special Committee or a person acting under delegation from the making of major policy decisions during an election period for a general election.

‘Major Policy Decisions’ are defined in the Act to be decisions:

- 1) relating to the employment or remuneration of a Chief Executive Officer under section 94 of the Act, other than a decision to appoint an acting Chief Executive Officer;
- 2) to terminate the appointment of a Chief Executive Officer under section 94 of the Act;
- 3) to enter into a contract the total value of which exceeds whichever is the greater of:
 - a) \$150,000 for goods and services contracts, \$200,000 for works contracts 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;
- 4) to exercise any power under section 193 of the Act if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$150,000 for goods and services contracts, \$200,000 for works contracts or 1% of the Council's revenue from rates and charges in the preceding financial year.

For the purposes of the 2016 election period, 1% of rates and charges revenue is \$180,390, therefore the greater value is \$180,390 for goods and services, and \$200,000 for works.

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 93A(2) of the Act.

b. Significant Decisions

In addition to major policy decisions as defined, other decisions may be controversial. The Chief Executive Officer will present advice on these matters in the context of:

- Council obligations under relevant legislation
- Existing Council policies and strategies
- Good professional practice.

The Council will however avoid making decisions during an election period that are of a significant nature and which would unnecessarily bind an incoming Council, unless the matter under consideration is urgent and cannot be deferred without having a negative impact on the Council, the municipality or the local community. Council will not make decisions that may affect the outcome of the election and could be deferred until after the election.

3. Electoral Matter

The Council will ensure that it complies with section 55D of the Act which requires that a Council does not print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during an election period unless it only contains information about the election process.

4. Council Publications

Section 55D of the Act imposes limitations on Council publications during the election period. This is to ensure that the Council does not publish material with public funds that may influence, or be seen to influence people's voting decisions. Refer to table 1 for a list of publications effected and how Council will deal with each type of publication, including certification requirements.

5. Certification Process

Relevant Council publications (newsletters, pamphlets, advertisements/advertorials, website and media releases) must be certified by the CEO before they may be printed, published or distributed during the election period, whether by the Council or by anyone acting for the Council.

To achieve this objective during an election period, all publications including newsletters, pamphlets, advertisements/advertorials, website and media releases will be reviewed and scrutinised to ensure they do not contain electoral material. Any publications which the Chief Executive Officer considers contain electoral material, will be modified, suspended, or withdrawn from display and/or distribution during the election period.

The Council website will be checked at the commencement of the caretaker period to ensure that information displayed could not be regarded as electoral material. This check will be undertaken by the Communications Officer and offending material removed.

The CEO must not certify a publication that contains electoral matter, unless that material is only about the election process. It is an offence for the CEO to intentionally or recklessly contravene this requirement.

The CEO's certification must be in writing and cannot be delegated to anyone else.

The following words will be used over the CEO's signature:

"Certified by the Chief Executive Officer in accordance with section 55D of the Local Government Act 1989"

Note that the certification does not need to be printed on published copies of a document. Copies of all certifications and certified documents must be retained in Council's Records System (TRIM and in hard copy).

6. Councillors

The Election Period Caretaker Policy does not restrict the ability of Councillors to issue media releases or make media comment in their own name and using their own resources.

There are however a number of prohibitions in relation to how a candidate conducts himself/herself during an election campaign and penalties apply. The majority of these are covered in sections 52 to 62B of the Act.

7. Council Resources

It is an established democratic principle that public resources must not be used in a 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 during an election period. See table 1 for a list of resources effected and how Council treat each of them.

Any staff member who considers that a particular use of Council resources may influence voting in the election must obtain approval as outlined in this policy before authorising, using or allocating the resource.

a. Events, Activities and Support Services

In applying this principle, the following will be normal practice during an election period for a general election:

- Public events will only be organised and run by the Council Administration if they are part of the normal services or operation of the Council and the scheduling of the event during the election period is deemed to be appropriate.
- 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.
- Media services, including media releases, will not be provided for individual Councillors by the Council Administration during the election period.

► ELECTION PERIOD 2016 CARETAKER POLICY

- Individual Councillor Newsletters will not be resourced by the Council in any way during the election period.
- Council Management will ensure that action on requests for service will continue to be based on established methods of setting priorities and from existing budget allocations with no bias with respect to requests from Councillors or election candidates.

These practices will be modified as appropriate for the election period.

b. Equipment, Stationery and Facilities

In accordance with current Council policy and practice, Council resources, including office and hospitality facilities, support staff, equipment/services, merchandise and stationery are provided or made available to Councillors for normal Council business and are therefore not to be used in connection with any electoral activities.

Council logos or letterheads, Hepburn Shire Council branding or Council provided photographs will not be used by Councillors in any way that relates to an election. Similarly, Council funded telephone (mobile or landline) numbers and email addresses are not to be used by Councillors as contact points in their election campaign material.

Council supplied computers, iPads and internet connections will not be used for campaign related purposes.

Mobile phone costs associated with electioneering will not be paid for by Council. Councillors will be required to use another mobile phone for electioneering.

Reimbursement of Councillors' out-of-pocket expenses during an election period will only apply to costs that have been incurred in the performance of official council duties and not for expenses that could be perceived as supporting or connected with a candidate's election campaign.

c. Council Business

As Councillors must continue to perform their elected role during an election period, they will, as a matter of course, receive all necessary information for them to fulfill that role. Information to be provided to Councillors will include:

- Information that is publicly and freely available – Council Plans, Annual Reports, strategies, policies and the like.
- Information and advice provided by Council's Management, as part of Council Meeting agendas. This information is, of course, publicly and freely available.
- Briefing Papers in relation to matters to be decided upon at forthcoming Council Meetings. It is likely that the briefing information provided to Councillors during an election period will be of a more routine nature than normal, given the approach to decision making during the election period.

d. Requests for Information

All requests received by Council staff for information about Council projects, programs or services, will be responded to in a 'business as normal' manner. This means up to date responses will be provided about progress on Council projects or services equally to Councillors, candidates and citizens.

Council staff will be particularly careful and conscious of the need to provide accurate and complete information. However a 'business as normal' approach does not include extensive research or analysis involving significant Council resources or providing a level of information which would not normally be available.

Requests for information which require significant resources to be devoted to making a response or which might be perceived to support an election campaign will be referred to the Chief Executive Officer or his/her delegate for consideration.

All election related enquiries from candidates or prospective candidates will be referred to the Returning Officer appointed to conduct the election.

Applications for information under Freedom of Information legislation will be dealt with in the normal manner.

DEFINITIONS

The following terms are referred to in the policy.

Term	Definition
Council	Hepburn Shire Council
Council Staff	Includes permanent and temporary full-time and part-time council employees, and contractors and consultants while engaged by Council.
Electoral advertisement, handbill, pamphlet or notice	As per Section 3(1) of the Act 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	<p>As per Section 3(1A) of the Act 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.</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.

▶ ELECTION PERIOD 2016 CARETAKER POLICY

Term	Definition
Publish	As per Section 3(1) of the Act means publish by any means including by publication on the Internet.
The Act	Local Government Act 1989

FURTHER INFORMATION

Any enquiries about the Election Period 2016 Caretaker Policy should be directed to Council's General Manager Corporate Services.

IMPLEMENTATION

In accordance with section 93B (4) of the Act, a copy of this policy will:

- a) be given to each Councillor as soon as practicable after it is adopted; and
- b) be available for inspection by the public at Council's customer service centres in Daylesford, Creswick and Clunes; and
- c) be published on the Council's Internet website maintained under section 82A.

The policy and the related certification processes will be communicated to all staff in the lead up to the election period.

REVIEW

The Election Period Caretaker Policy will be formally reviewed and updated at least one year prior to each Hepburn Shire general election in accordance with section 93B (2) of the Act, or as required by legislative changes.

The officer responsible for the review of this policy is the General Manager Corporate Services.

TABLE 1
COUNCIL PUBLICATIONS AND RESOURCES

	Publications	Resources
	<i>Council advertisements, handbills, pamphlets and notices must be certified by the CEO during an election period. Penalties apply to the certification, printing, publishing or distribution of such documents containing electoral matter.</i>	<i>Councils should ensure that council resources, including staff, are not used for electoral campaigning purposes during elections. In some cases misuse of Council resources may be a criminal offence that can be prosecuted in court.</i>
Annual report	<p>The annual report is required by law and would not normally be considered an “advertisement, handbill, pamphlet or notice”. It does <u>not require certification</u>.</p> <p>However, the annual report must not include material that is electioneering or that publicises the attributes or achievements of individual Councillors.</p> <p>In addition, if a Council will be printing or distributing a greater number of copies of the annual report than usual, it may be regarded as a pamphlet and should be subject to certification by the CEO.</p>	<p>Section 131(6) of the Act requires the Council to normally submit its annual report to the Minister no later than 30 September each year.</p> <p>This is a proper use of Council resources.</p>
Annual report summary	Any publication of an extract or summary of the annual report is regarded as a pamphlet and must be <u>subject to the certification process</u> .	Council resources should not be used to produce or distribute any summary of an annual report during the election that would be regarded as electoral material.

► ELECTION PERIOD 2016 CARETAKER POLICY

<p>Council meetings</p>	<p>Agenda papers and minutes of meetings are not considered advertisements, handbills, pamphlets or notices and <u>do not require certification</u>.</p> <p>However, if Council meeting papers are printed or published for a wider distribution than normal, they will be treated as pamphlets and be subject to the certification process.</p>	<p>The conduct of Council meetings, as well as the preparation of agenda papers and minutes, is part of normal Council business. It is expected that they would continue to be resourced by the Council administration during an election period.</p>
<p>Advertisements & notices</p>	<p>All Council advertisements and notices must be <u>subject to the certification</u> process during an election period. This includes job advertisements and various notices, such as, Council meetings and road closures.</p> <p>Newspaper notices giving dates, times and locations of meetings are not regarded as electoral matter under section 3(1) of the Act and <u>do not require certification</u>.</p>	<p>-</p>
<p>Web site – new material</p>	<p>Any new material published on the Council's web site during the election period that may be considered an advertisement, handbill, pamphlet or notice <u>must be subject to the certification process</u>.</p> <p>As noted above, Council agendas, minutes of meetings and full annual reports do not require certification if published in the usual way.</p>	<p>Councils web sites will not be used to convey information that could be regarded as electoral material unless it is only about the election process.</p>

► ELECTION PERIOD 2016 CARETAKER POLICY

<p>Web site – existing material</p>	<p>It is not necessary to certify material that was published on the Council’s web site well before the election period.</p> <p>The Council web sites will be checked at the start of the election period by the Communications Coordinator (see : Section 5 certification process)</p> <ul style="list-style-type: none"> • Profiles of Councillors who are candidates will be removed from the web site, but not contact details. • Information prominently displayed on the web site that might be regarded as likely to influence how people vote will be removed. 	<p>Council's web sites should not be used to convey information that could be regarded as electoral material unless it is only about the election process.</p>
<p>Social media</p>	<p>Any publication on social media sites like facebook or twitter, which are auspiced by the Council, <u>will require certification by the CEO.</u></p> <p>Similar requirements apply to Council blog sites.</p>	<p>Council auspiced social media must not be used for election campaigning.</p> <p>Council will limit access to its social media sites during the election period and undertake constant monitoring to ensure no electoral matter is posted.</p>
<p>Email</p>	<p>Emails that are part of the normal conduct of Council business will not require certification.</p> <p>However, any emails with multiple addressees, used for broad communication with the community, will be subject to the certification process.</p>	<p>Council email services must not be used for electioneering purposes.</p> <p>If necessary, Councillors and other candidates should be referred to one or more of the free email providers for private email addresses.</p>
<p>Correspondence</p>	<p>Mass mail outs or identical letters send to a large number of people by or on behalf of Council will be <u>subject to the certification process.</u></p>	<p>Council staff will not prepare Councillors’ private mail or electoral correspondence and such material must not be printed on Council stationery or using Council equipment.</p>

► ELECTION PERIOD 2016 CARETAKER POLICY

Mobile phones	<p>-</p>	<p>Mobile phone costs associated with electioneering will not be paid for by the Council.</p> <p>Councillors will be required to use another mobile phone for electioneering.</p>
Council offices and libraries	<p>Existing documents available to the public at Council offices and libraries do not normally require CEO certification.</p> <p>However, any increase in the availability of a publication should be subject to certification.</p> <p>Staff will check material in libraries and offices to make sure that publications including electoral matter are not prominently displayed.</p>	<p>Electoral material, including pamphlets, posters and notices should not be visible or available at any Council premises during an election.</p> <p>The only exception to this is material issued by the returning officer for the purpose of conducting the election.</p>
Media releases	<p>Media releases are documents that <u>require certification by the CEO</u>.</p>	<p>Council staff must not prepare, or assist in the preparation of, media releases that contain electoral material.</p> <p>Councillors should be advised that media releases dealing with their election campaign should only be issued privately.</p>

► ELECTION PERIOD 2016 CARETAKER POLICY

<p>Events</p>	<p>Material printed or disseminated during the election period to publicise a function or event must be <u>subject to the certification process</u>.</p>	<p>Functions or events for the purpose of electioneering must not be resourced or publicised by the Council.</p> <p>Normal Council events are not prohibited in the election period. These will be kept to a minimum.</p> <p>Where events do occur, Councillors should be advised that they are representing the Council and should not use the opportunity for electioneering.</p>
<p>Speeches</p>	<p>Any publication or distribution of Councillors' speeches by the Council must be <u>subject to the certification process</u>.</p>	<p>Council staff and resources will not be used to prepare or publish speeches that contain electoral matter.</p>
<p>Title of "Councillor"</p>	<p>-</p>	<p>Councillors may use the title "Councillor" in their election material, as they continue to hold their positions in the period.</p> <p>To avoid confusion, Councillors must ensure that any election publication using the title "Councillor" clearly indicates that it is their own material and does not represent Council or its views.</p>
<p>Returning officer</p>	<p>The election returning officer is a statutory position and does not perform his or her duties on behalf of the Council. Therefore, publications by a VEC returning officer do not need certification.</p> <p>However, if the returning officer is a member of Council staff, section 55D(4)</p>	<p>-</p>

▶ ELECTION PERIOD 2016 CARETAKER POLICY

	may apply and the Council should seek advice.	
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While this document provides general guidance, the definitive statement of legal obligations is the law itself – particularly the relevant provisions of the *Local Government Act 1989*.