1. PURPOSE

Council staff and councillors must observe specific legislative requirements during the period leading up to a council election.

In addition, section 69(1) of the *Local Government Act 2020* (the Act) requires that councils include an Election Period Policy in its Governance Rules.

The purpose of this Policy is to:

a) Comply with the legislative requirements of the Act;

b) Provide for the continued operation of Wodonga Council (the council) during election periods in a manner that is fair, equitable and transparent;

c) Assure the community that the council will not use public resources in election campaigning or make decisions that may bind the incoming council, while continuing to function on behalf of the community; and,

d) Explain to councillors and staff the legislative requirements and the protocols that must be observed during the election period.

2. SCOPE

This policy applies to all councillors and staff of the council, and impacts all candidates in an election.

This Policy is chapter 7 of the council's Governance Rules.

3. DEFINITIONS

3.1 Election period

During the 'Election Period' for a Municipal General Election the council will be deemed to be in 'Caretaker Mode'. The election 'caretaker' period is defined by section 3(1) of the Act to commence at the time that nominations close on nomination day, and ends at 6pm on the election day.

Therefore, the election period for the 2024 elections commences at noon on Tuesday, September 24, 2024 and ends at 6pm on Saturday, October 26, 2024.

3.2 Electoral material

Electoral material as defined by the Act means "an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper that is only announcing the holding of a meeting".

3.3 Electoral matter

Electoral matter as defined by 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 election manager for the purposes of conducting an election".

Further the Act stipulates that "without limiting the generality of the definition of electoral matter, matter is to be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on—
(a) the election; or
(b) a candidate in the election; or
(c) an issue submitted to, or otherwise before, the voters in connection with the election".

4. POLICY

4.1 Business of council

During the election period, the business of council must continue and ordinary matters of administration must continue to be addressed.

Council is committed to fair and democratic elections, and commits to comply with the restrictions, limitations and controls described in this policy to ensure that all candidates seeking election to council are treated fairly and equitably.

4.2 Prohibited decisions

In accordance with section 69(2) of the Act the council is prohibited from making a decision during an election period for a general election that:

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; or
b) commits the council to expenditure exceeding one per cent of the council's income from general rates, municipal charges and service rates and charges in the preceding financial year; or
c) the council considers could be reasonably deferred until the next council is in place; or
d) the council considers should not be made during an election period.

In accordance with section 69(3) of the Act the council is prohibited from making a decision during an election period for a general election or a by-election 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.

The following decisions will not be made during an Election Period:

- Approval of contracts that require significant funding in future financial years or are regarded as politically sensitive.

- Decisions that have significant impacts on the council's income or expenditure or that relate to expenditure on politically sensitive matters.

- Allocation of community grants or other direct funding to community organisations.

- Major planning scheme amendments.
- Sale or discontinuance of roads, etc.
- Decisions of a politically sensitive nature.
- Setting advocacy positions.
- Policy or strategy decisions.

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 decision, the Chief Executive Officer, or delegate, may make an application to the Minister for a compliance exemption in accordance with section 177 of the Act.

4.3 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 to a delegated committee of council for a decision.

The Caretaker Statement will specify one or more of the following.

a) The recommended decision is not a decision prohibited by the Act and is a decision that falls within the guidance of the Election Period Policy.

b) The recommended decision is outside the guidance of the Election Period Policy, but the following negative consequences of a failure to make a decision on this matter outweigh the consequences of binding an incoming council. [Insert description of negative consequences of failure to make decision].

c) The recommended decision is a decision prohibited in the Act during an election period, but compliance exemption was sought from the Minister in accordance with section 177 of the Act and was granted by on [insert date].

During the election period, the council will not make a decision on any matter or report that does not include one of these Caretaker Statements.

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

The agenda for council meetings held during the election period will make no provision for question time, notices of motion, and general business.

4.4 Annual Report

It is a requirement of the Act that council's Annual Report is presented by the Mayor at an open meeting of council held, in the year of a general election, on a day not later than the day before election day. This may require the presentation of the report to a council meeting held during the election period.

4.5 Considerations for officers with delegated authority

Before making any decisions under delegated authority during the election period, officers should consider the following:

- Whether the decision would be likely to affect voting in the election.
- The urgency of the issue (that is, can it wait until after the election?).
- The possibility of financial repercussions if it is deferred.
- Whether the decision is likely to be controversial.
- The best interests of the council.

Officers requiring assistance in determining whether a decision is likely to be inappropriate should seek advice from their Director in the first instance.

4.6 Delegated committees

The operation of council delegated committees will be suspended during the Election period.

Delegated committees may resume meeting following the election and the appointment by the incoming council of representatives to each committee.

4.7 Public consultation

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.

Public consultation should be avoided during the election period. The council should not commission or approve any public consultation if such consultation is likely to run into the election period.

Public consultation required under the *Planning and Environment Act 1987*, or matters subject to section 223 of the *Local Government Act 1989* , or the council's Community Engagement Policy, may be approved by the Chief Executive Officer (CEO) or the council, where such consultation would involve matters that are not prohibited under section 69(2) and (3) of the Act.

Where public consultation is approved to occur during the election period the results of that consultation will not be reported to the council until after the election period.

4.8 Access to information

4.8.1 Councillors

As councillors must continue to perform their elected role during the election period, they will, as a matter of course, receive all necessary information for them to fulfil that role.

Information to be provided to councillors will include:

- Information that is publicly and freely available such as Council Plans, Annual Reports, strategies, policies and the like.
- Information and advice provided by the CEO as part of the council meeting agendas. This information is publicly and freely available.
- Councillor 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 the election period will be of a more routine nature than normal, given the restrictions on major policy or significant decision making during the election period.

Section 123 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.

4.8.2 Candidates, including sitting councillors

Once nominations have closed, the CEO, or delegate, will issue advice to all staff of the names of the candidates.

The council affirms that all candidates for the council election, including any sitting councillors, will be treated equally.

Any assistance and advice to be provided to candidates as part of the conduct of the council election will be provided equally to all candidates, subject to the conditions set out in section 4.8.3 of this policy.

All election process related enquiries from candidates 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 delegate for consideration.

All requests received by council staff for information about projects, programs or services will be responded to in a 'business as normal' manner. 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.

Any Freedom of Information applications lodged during the election period on matters such as expenses or costs etc regarding current councillors will be dealt with where possible outside of the election period (the *Freedom of Information Act 1982* specifies a 30 day period in providing a response to an FOI application).

4.8.3 Request for Information Register

During the election period, a request for information register will be maintained by the Governance Officer. This register will be a public document that records all requests relating to electoral matters, non-routine requests for information by candidates (including any sitting councillors), as well as the responses provided. The information will be published to the council's web page and updated on a daily basis, or as required.

Staff are required to discuss requests for information by all candidates (including any sitting councillors) with their Director to determine an appropriate response, prior to contacting the Governance Officer for inclusion of the request into the register.

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 CEO, or delegate, for consideration.

4.9 Publication of electoral matter

The council will not print, publish or distribute material that is electoral matter during an election period. Electoral matter is broadly defined to be matter which is intended or likely to affect voting in an election. This limitation does not apply to electoral material that is only about the election process.

Material is definitely electoral matter if it:

- 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; or,
- Publicises the achievements of the elected council.

The council will not print, publish or distribute any advertisement, handbill, pamphlet, or notice during the election period unless it is first certified, in writing, by the CEO.

The CEO's certification must be in writing and cannot be delegated to anyone else. Copies of all certifications and certified documents must be retained on council records.

4.9.1 Media, communications and marketing

Council communications are a legitimate way to promote council activities and services and will continue to be used during the election period. However, council communication channels will not be used in any way that might influence the outcome of a council election.

During the election period, the following protocols will be observed.

- The CEO, or a nominated officer, will be the official spokesperson/s in any council media releases. No media releases issued will quote or feature any councillors.

- In response to any media inquiries, only the CEO, Directors or Manager Marketing and Engagement will provide a response and only information related to services and operations will be included. It must not involve the election or possible election outcomes.

- Any requests from councillors for advice or assistance will be referred to the CEO. No media advice or assistance will be provided to councillors in relation to election campaign matters.

- A council employee will not initiate or make any public statement that could be construed as influencing the election or relates to an election issue. Public statements include not only formal media releases but verbal statements at meetings, functions and events they are attending as part of their council role.

- During the election period, publicity campaigns, other than for the purpose of conducting the election, will be avoided where possible. Where deemed necessary for a council activity, any publicity campaign must be approved by the CEO. Council media, publicity and communications will be restricted to promoting normal council activities and services and will not involve specific councillors.

- Councillors must not use their position as an elected representative or their access to council staff and other council resources to gain media attention specifically in support of their election campaign. This includes photographs taken by or provided to the council and applies to all council images including those on council websites which may be able to be copied. Please refer to section 4.10 of this policy.

Section 304(2) of the Act is only concerned with electoral matter that is printed or published. It would not prevent a councillor or candidate from responding to a matter by issuing their own media release in their own name and using their own resources (i.e. not using council staff or resources).

4.9.2 Publications

Section 304(2) of the Act limits the council from printing, publishing, or distributing electoral material during an election period. It defines electoral material as "an advertisement, handbill, pamphlet or notice".

Our interpretation of section 304(2) includes:

- Council newsletters;

- Advertisements and notices;

- Media release;

- Leaflets and brochures;

- Mailouts to multiple addresses;
- Social media posts;
- Council noticeboards;
- New website material;
- Enewsletters;
- Reports;
- Material to publicise an event; and,
- Publication and distribution of councillor speeches.

Any references to councillors or candidates in council publications printed, published distributed and online during an election period must not include promotional text. Profiles will be removed and details restricted to names, contact details, titles and membership of special committees and groups as part of their council role.

Councillors are, however, able to publish campaign material on their own behalf, but cannot purport for that material to be originating from, or authorised by, council. No council logos, images, graphics, letterheads or Wodonga Council branding will be used, or linked, to a candidate's election campaign.

Publications must be read broadly to include electronic information and web-based productions.

All publications, as defined, must be reviewed by the Manager Marketing and Engagement, and subsequently forwarded to the CEO for certification.

The council must not print, publish or distribute a publication during the election period unless it has been certified in writing by the CEO.

The CEO's certification must be in writing and cannot be delegated to anyone else. Copies of all certifications and certified documents must be retained on council records.

An internal protocol has been developed for the certification process.

4.9.3 Online communications

Online communications including social media, websites and enewsletters offer council a low-cost and effective way to reach a large section of the community with information on council services.

Its fast-paced, interactive and immediate nature present challenges in controlling content.

Council has a range of corporate online channels across venues.

As per section 4.9.2 of this policy, any publications on social media sites during the election period must be certified by the CEO. This may mean messages and responses to queries may not be posted as quickly as normal.

Protocols have been developed for managing the council's social media and online channels.

During the election period, the Manager Marketing and Engagement and the Communications team will monitor and oversee all online channels to ensure they are managed in accordance with this policy.

During the election period, the following social media controls will be implemented.

- No posts or comments that may be construed as electoral matter will be permitted on council sites.
- No hosting or responding to political content will be permitted.
- All comments and posts will be moderated in accordance with this policy.
- Any inappropriate posts will be removed, as soon as practicable.
- Councillors will not be profiled on council social media channels during the election period.

During the election period the council's website will not contain material which is precluded by the statutory requirements or by this policy. Any references to the election will only relate to the election process. References to councillors will be restricted to titles, names, and contact details and will not include promotional text or photographs.

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.

A disclaimer will be placed on social media channels and the council's websites to inform the public that throughout the election period the council's social media channels will have limited postings.

4.9.4 Annual report

Council is required to produce and put on public display a copy of its Annual Report. The Annual Report may be published by the CEO, or delegate 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 is required under the Act and is not normally considered an advertisement, handbill, pamphlet or notice. It does not require certification by the CEO.

It may not include information about councillors beyond what is required by any legislated Regulations or Ministerial Guidelines.

The 2023-2024 annual report will not contain a message from the Mayor.

Any publication of any extract, or summary of the Annual Report is regarded as a pamphlet, and must be subjected to certification by the CEO.

4.9.5 Events and functions

Reference to events and functions means gatherings of internal and external stakeholders to discuss, review, acknowledge, communicate, celebrate or promote a program, strategy or issue which 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.

The council will avoid holding or sponsoring events, citizenship ceremonies and functions during the election period outside of normal council activities including annual events.

If special circumstances require an event, function or ceremony to be held, the reasons must be justified and any risk of affecting voting or influencing the election must be mitigated or prevented and subject to CEO approval.

Councillors must not give speeches or keynote addresses at council-organised or sponsored events and functions during the election period.

Councillors may continue to attend events and functions during the election period. However, councillors attending in their role as a council representative must not use the opportunity for electioneering.

Any promotional material for an event, function or ceremony must be consistent with the publications control detailed in section 4.6.2 of this policy.

4.10 Council resources

It is essential that due propriety is observed in the use of all council resources. It is also important that all councillors have access to the resources necessary to fulfill their elected roles.

In order to ensure the proper use of council resources during the election period the following will apply.

- Council resources, including offices, support staff, hospitality, equipment, email, mobile phones and stationery will be used exclusively for normal council business and will not be used in connection with election campaigning. Council staff are required to exercise appropriate discretion in that regard. In any circumstances where the use of council resources might be construed as being

related to a candidate's election campaign, advice will be sought from the relevant Director or the CEO.

- Reimbursement of councillors' out-of-pocket expenses in 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.

- Council logos, images, graphics, letterheads, or other branding must not be used for, or linked in any way to, a candidate's election campaign.

- Council staff must not be asked to undertake any tasks connected with a candidate's election campaign.

- Photographs and images paid for by the council or developed/taken by council officers are not to be used in electoral material for any candidate. This includes images of councillors, events and the physical realm.

No election material or active campaigning is to be conducted at council sponsored functions or events.

4.11 Disclaimer

While this policy is intended to guide council staff and councillors, it is not a substitute for legal advice. Individuals should seek their own independent advice if they are unsure about any aspect of the legislative provisions for the election period.

5. ATTACHMENTS

Nil.

6. RELATED POLICIES

Nil.

7. RELATED LEGISLATION

Local Government Act 2020.

The *Victorian Charter of Human Rights and Responsibilities Act 2006*.

8. REFERENCES

Records Management Directive.

9. REVIEW

This policy has been developed for the 2024 council election and any by-elections that may be required in the following four years. The council may review this policy at any time but unless otherwise requested at least 12 months before the commencement of each subsequent council election period.

Minor amendments to the policy may be authorised by the CEO at any time where such changes do not alter the substance of the policy eg: typographical errors, a change to the name of a related policy, or a change to the name of legislation.

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Reference No:	D18.55342[v4]
Business Unit:	Community
Category:	Quality Manager - Strategic and Governance Policy
Approved By:	Council at its meeting of August 17, 2020
Next Review:	1 August 2024