



WARRNAMBOOL
CITY COUNCIL

Election Period Policy 2023

APPROVAL DATE: November 2023

REVIEW DATE: October 2027

DOCUMENT CONTROL

Document Title:	Election Period Policy
Policy Type:	Council
Responsible Branch:	Executive Services
Responsible Officer:	Manager Governance
Document Status:	Adopted
Approved By:	Council
Approved Date:	November 2023
Review Date:	October 2027

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INTRODUCTION

1.1. Purpose

Section 69 of the Local Government Act 2020 (the Act) requires Council to have an Election Period Policy. The Policy sets out the procedures to be applied by Council during the election period for a general election. During the election period certain prohibitions apply to the general functions and powers of Council.

The Policy has been developed to ensure that Warrnambool City Council's general elections to be held on Saturday, 26 October 2024, and subsequent elections, are conducted in a manner that is ethical, fair and equitable and are publicly perceived as such.

1.2. Scope

This Policy applies to all Council staff, Councillors and election candidates during the election period, also known as the caretaker period.

The election period starts at the time that nominations for the election of Council close, known as nomination day. The election period for the 2024 elections will apply from 24 September 2024 until 6pm on Election Day, Saturday 26 October 2024, inclusive.

1.3. Definitions

Term	Definition
Candidate	means a person who has nominated as a candidate for an election under section 256 of the Act
CEO	Chief Executive Officer
Election day	means the day of the election determined under section 257 or 260 of the Act
Election period	means the period that starts at the time that nominations close on nomination day and ends at 6pm on election day
Electoral material	is defined in the Act as 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
Electoral matter	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
Nomination Day	means the last day on which nominations to be a candidate at a Council election may be received
Returning Officer	the officer appointed by the Victorian Electoral Commission who is responsible for the conduct of the election and who formally announces the election results

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Significant decisions	<p>means any Council decision, including decisions made by Council staff acting under a delegation, given by Council during an election period for a general election that:</p> <ol style="list-style-type: none"> 1. May irrevocably commit the incoming Council to substantial expenditure or to other significant actions; or 2. May have an irrevocable or significant impact on the municipality or a significant section of the community.
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2. POLICY

2.1. Policy Statement

The Policy is intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the election period before a general election. It places limits on public consultation and the scheduling of Council events and puts in place procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.

2.2. Policy Objectives

- 2.2.1. This Policy facilitates the continuation of Council’s ordinary business throughout the election period in a responsible and transparent manner, in accordance with statutory requirements and established “caretaker” conventions.
- 2.2.2. This Policy explains how Council will conduct its business during the election period to ensure that the elections are not compromised by inappropriate electioneering by existing Councillors and safeguards the authority of the incoming Council.
- 2.2.3. This Policy aims to address and provide guidelines in respect of the matters listed below:
 - Council decision-making
 - Public consultation, meetings and Council events
 - Council Publications
 - Use of Council resources
 - Access to Council information and assistance to candidates
 - Media and publicity
 - Section 123 of the Act (misuse of position)

2.3. General

- 2.3.1. During the election period, Council will not make decisions that:
 - Relate to the appointment or remuneration of the Chief Executive Officer (CEO) but not to the appointment or remuneration of an Acting CEO
 - Commits Council to expenditure exceeding 1 per cent of the Council’s income
 - Council considers should not be made during an election period

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During the election period, Council will:

- Ensure that Council resources are not used for election campaign purposes, nor in a way that might improperly influence the result of an election
- Limit public consultation, public meetings and Council events in order to facilitate Council's day- today business while avoiding any express or implied links to the election
- Not print, publish or distribute "electoral matter"

2.3.2. Election Period

The election period (also known as the caretaker period) refers to the period commencing on the last day on which nominations for the election can be received (nomination day) and continues until election day.

For the 2024 elections, the election period starts on 24 September 2024 and ends at 6pm on Saturday, 26 October 2024.

Recognising that electioneering can occur at any time throughout a term of Council, this policy is applicable at any time in so far that any candidate should not utilise any Council resource, advantage or benefit for the purposes of electioneering. This extends to practice that could create the public perception that some benefit or advantage has been gained by any candidate.

2.3.3. Communication of Policy

Following the adoption of the Policy, a copy of the Policy will be published on Council's website and copies will also be circulated to nominated candidates at the close of nominations.

The CEO will ensure that all staff are informed of the requirements of this policy prior to commencement of the election period.

2.4. Council Decision Making

2.4.1. Section 69 of the Act prohibits the making of some decisions during an election period.

a) **Chief Executive Officer**

In accordance with section 69(2)(a) Council must not, during the election period, make a decision that relates to the appointment or remuneration of the CEO, other than a decision to appoint an acting CEO.

b) **Contracts**

In accordance with section 69(2)(b) Council must not commit to expenditure with a value in excess of the equivalent of 1 per cent of Council's rates and charges levied in the

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preceding financial year.

c) **General**

In accordance with section 69(2)(c) and (d) Council is prohibited from making a decision that the Council considers could be reasonably deferred until the next Council is in place or that Council considers should not be made during an election period.

d) **Invalid Decisions**

A Council decision made in contravention of section 69(2) (a) or (b) of the Act is invalid in accordance with section 69(4) of the Act.

e) **Compensation**

In accordance with section 69(5) of the Act, any person who suffers any loss or damage as a result of acting in good faith on a Council decision that is invalid is entitled to compensation from Council for that loss or damage.

2.4.2. Significant Decisions

Council will use all reasonable efforts to avoid making significant decisions. For the purposes of this Policy, significant decisions include, but are not limited to:

- Decisions that may irrevocably commit the incoming Council to substantial expenditure or to other significant actions, for example spending unbudgeted monies, the allocation of community grants or other direct funding to community organisations
- Decisions that may have an irrevocable and significant impact on the municipality or a significant section of the community, for example, major planning scheme amendments, unplanned community consultation, adopting a new policy, strategy or local law or changes to strategic objectives and strategies in the Council Plan

2.4.3. Significant Decision Considerations

Where possible, the CEO will ensure that any anticipated significant decisions are scheduled for Council to consider and determine prior to the start of the election period or are scheduled for determination by the incoming Council.

However, during the election period the CEO may still determine that a significant policy decision is required and will advise Council accordingly. In making any such determination, the CEO will have regard to all circumstances, including, but not limited to:

- Whether the decision is, in fact, significant
- The urgency of the decision (if the decision could reasonably be made by the incoming Council)

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- Whether the decision is likely to be controversial or affect voting in the election
- Whether the decision would require the spending of unbudgeted monies
- Whether the decision is in respect of the completion of an activity already commenced and has been endorsed by the incumbent Council
- Whether the decision requires community engagement
- Whether the failure to make the decision would have a negative impact on Council, the municipality or the local community
- Whether the disadvantage of avoiding making the decision exceeds the benefit of making the decision
- Any relevant statutory obligations and timeframes
- The best interests of the community and Council

2.4.4. Decisions Made Under Delegation

Decision-making power is delegated to Council staff in accordance with Council's *Delegations and Authorisations Policy*. Staff should be aware that some decisions made by staff under delegation may be significant decisions.

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

- Whether the decision is significant
- The urgency of the decision – can it be deferred until after the election period?
- The possibility of financial or other repercussions if the decision is deferred
- Whether the decision is likely to be controversial
- Whether the decision is in the best interests of Council and the community

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

2.4.5. Election Period Statement

During the election period, the CEO will ensure that an “election period statement” is included in every report submitted to Council for a decision. The election period statement will appear at the start of each item listed on the agenda and will take the following form:

1. *This report is being considered during an election period. The recommended decision is not a prohibited decision in accordance with section 69(2) and (3) of the Local Government Act 2020, nor a significant decision within the meaning of Council's Election Period Policy.*

OR

2. *This report is being considered during an election period. The recommended decision is not a prohibited decision in accordance with section 69(2) and (3) of the*

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Local Government Act 2020 but has been determined by the Chief Executive Officer to be a significant decision within the meaning of Council's Election Period Policy. An exemption is required for the following reasons: [insert reasons for exemption].

In accordance with section 177 of the Act Council may resolve to apply to the Minister for Local Government for a compliance exemption if it is required to make a prohibited decision within the meaning of section 69(2) or 69(3) of the Act.

2.4.6. Announcements If Decisions Made Prior To The Election Period

To avoid doubt, this policy applies only to the actual making of decisions, not the announcement of decisions which have been made prior to the election period. However, as far as practicable such announcements should be made before the election period begins.

2.5. Public Consultation, Meetings and Council Events

2.5.1. Limited Public Consultation

Council will limit public consultation primarily to any consultation required under the *Planning and Environment Act 1987* and matters subject to section 223 of the *Local Government Act 1989*.

Public consultation may also be required in other circumstances to ensure that Council's normal operational activities are proactively managed or as part as established ongoing consultation. In these instances Council will endeavour to reschedule consultation in the first instance. If this is not possible all public consultation done during the Election Period will avoid any express or implied links to the election. Any new public consultation will only be undertaken with the CEO's prior approval.

2.5.2. Public Meetings and Council Events

Public meetings and events coordinated by Council will not be held during the election period, unless the meeting or event cannot be re-scheduled, and it would negatively impact Council or the community. Where it is deemed necessary to hold meetings or events during this period, prior approval is required by the CEO (as well as approval for running sheets and speeches). Where Council meetings or events are held during the election period, Councillors and candidates are not permitted to use events and meetings as forums for electioneering purposes and must not distribute election material.

In instances where a Councillor is invited to attend an external event or function in their capacity as a Councillor, roles are restricted to official duties only (where a Councillor would ordinarily perform such duties.) These duties must be performed in their usual way and Councillors must not use these events for the purposes of electioneering. Invitations are deemed to be in the capacity as Councillor where it is

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coordinated/received via the CEO's office or another Council department and when the invitee would not usually be invited in a private capacity.

2.5.3. Council Meetings

Council meetings will continue during the election period and will be open to the public and livestreamed as usual. Councillors will not use Council meetings during the election period for the purposes of electioneering.

Council will continue to take public questions however questions will not be read out during council meetings and only written responses will be provided.

2.5.4. Advisory Committee Meetings

The operation of Council Advisory Committees shall be suspended upon the commencement of the election period ahead of a general Council election.

Any outstanding Advisory Committee Reports may still be reported to a Council meeting during this period.

Council Committees shall resume meeting following the election and the appointment by the incoming Council of Councillors to each committee.

2.6. Use of Council Resources

2.6.1. A Councillor must not use Council resources in connection with, or in any way that may be perceived as in connection with, an election campaign. This applies to a Councillor standing in Council, State or Federal government elections. Such use would constitute misuse of position by the Councillor.

Council resources include financial, human (a staff member's or a consultant's time) and material resources. In circumstances where it is unclear if the use of Council resources is related, or may be perceived as being related, to a candidate's election campaign, the use should be referred to the Manager Governance for a determination.

2.6.2. The following specific restrictions apply:

- a) Council resources, including, but not limited to, office space, staff, hospitality services, catering, IT equipment, stationery and use by the Mayor of a Council-owned vehicle, may be used for normal Council business only during the election period and must not be used in connection with a candidate's election campaign.
- b) Reimbursement of Councillor out-of-pocket expenses during the election period will continue to apply to expenses incurred in the performance of normal Council duties only. Expenses that are, or could be, perceived as supporting or being

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connected with a candidate's election campaign will not be reimbursed.

- c) Photographs or images paid for by Council or taken by Council staff must not be used in election material by any candidate or incumbent Councillor. This extends to images of Councillors, events and any Council infrastructure.
- d) Council's logo, letterhead, or any other Council branding may not be used for, or associated in any way with, a candidate's election campaign.

2.7. Access To Council Information And Assistance To Candidates

Council acknowledges that candidates expect Council to respond to their requests for information that relates to the election. Any such requests will be responded to equitably and as though all candidates have made the same request.

Accordingly, all candidates will receive the same information. Incumbent Councillors will continue to receive information that is necessary to fulfil their Council roles. Where information relates to what could be considered an "election issue" or is not required to fulfil duties as a Councillor, requests will be denied.

2.7.1. All candidates will be treated equally which means that:

- a) Any assistance and advice provided to candidates as part of the conduct of the Council election will be provided equally to all candidates.
- b) All election process-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 CEO or a designated member of Council staff.

2.7.2. Councillors and other candidates will not be provided with information or advice from Council staff that may be perceived to support their election campaign. There will be complete transparency in the provision of information and advice during the election period. The following specific restrictions apply:

- a) Information and briefing materials prepared by staff for Councillors during the election period will relate only to factual matters or to existing Council services or projects. Such information will not relate to policy development, new projects or matters that are the subject of public or election debate or that might be perceived to relate to a candidate's election campaign.
- b) An Information Request Register will be maintained during the election period. The Register will be made available on Council's website and will record all requests for information by Councillors and candidates, and Council's responses.

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- c) Requests for information which require the use of significant Council resources in order to provide a response, or which might be perceived to support an election campaign, will be referred to the CEO for a determination as to whether a response may be provided.

2.8. Electoral Material

2.8.1. Publishing Electoral Material

Electoral material is defined in the Act as 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.

Electoral matter 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. The definition 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
- b) a candidate in the election
- c) an issue submitted to, or otherwise before, the voters in connection with the election

Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, electoral material containing electoral matter.

The definition of 'publish' extends to information published on Council's website and on social media. It includes, but is not limited to, material about the election, incumbent Council, election candidates and issues of contention in the election.

It does not include material produced by the Returning Officer for the purpose of conducting the election, information about the election process, advertisements announcing the holding of meetings and statutory documents such as rate notices, food premises registrations and parking fines.

Some examples of what constitutes electoral matter is material that:

- Publicises the strengths or weaknesses of a candidate
- Advocates Council policies or those of a candidate
- Responds to claims made by a candidate
- Publicises the achievements of the incumbent Council or individual Councillors
- Refers to matters known to be contentious in the community and likely to be the subject of election debate
- Promotes the role or duty of a Councillor

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The wide definition of electoral matter means that Councillors must consider communication activities in their capacity as a Councillor during the election period and the run up to the election period.

To minimise the risk of inadvertent publishing that contains electoral matter, Council will minimise its publication activity during the election period.

2.8.2. Annual Report

The Annual Report is not considered to be an advertisement, handbill or pamphlet, however the Annual Report must not include matter that may be considered electioneering or publicising attributes or achievements of individual Councillors.

Information about Councillors will be restricted to what is required by the Local Government (Planning and Reporting) Regulations 2020.

Despite publication of the Annual Report during the election period, it is deemed appropriate that the Mayoral Message be included in the Annual Report. However, the Mayoral Message will be limited to matters regarding the operations of Council in the proceeding financial and will not be used for electioneering.

2.9. Media and Publicity

2.9.1. Council Issued Communications

Council publicity that contains general ongoing Council news or information about the election process is permitted. Council publicity will not be used in any way that might influence the outcome of the election and will not quote or feature Councillors

The following specific requirements apply during the election period:

- a) Council staff must not make any public statement that could be construed as influencing the election. This does not include statements of clarification that have the prior approval of the CEO. Statements of clarification will only be used where not issuing a statement could mislead or deceive a large proportion of the public and would impact Council's service delivery.
- b) Public events and related publicity campaigns, other than for the purpose of conducting the election, will be avoided wherever possible. Where a public event or publicity campaign is deemed necessary for a Council service or function, it must have the prior approval of the CEO.
- c) Media releases, responses or statements will be minimised and avoided where possible.

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- d) Existing material available to the public in Council facilities will be assessed for inclusion of electoral matter and any such matter will be temporarily withdrawn or not prominently displayed in so far as this is practicable in the circumstances.

2.9.2. Council Websites and Social Media

During the election period, information about Councillors on Council's websites will be restricted to portrait photographs, names, titles, and contact details.

The use of Council-operated social media may will be limited to the advertisement of routine Council business and social media publications will be assessed for the presence of electoral matter by the Manager Communications prior to publishing.

The following specific requirements apply during the election period:

- a) Council will only respond to service requests or requests for information published via social media as they relate to operational matters. Where possible, responses will be provided privately, rather than being published publicly.
- b) Council will not respond to online commentary throughout the election period, unless clarification is needed to ensure that a large proportion of the public is not misled or deceived in relation to key service delivery.

2.9.3. Councillor-Issued Communication

- a) No media advice or assistance may be provided by staff in relation to election campaign matters, or regarding publicity that involves specific Councillors.
- b) Councillors are not permitted to use their access to Council staff and other Council resources to gain media attention in support of their election campaign.
- c) Councillors and other candidates are permitted to issue their own media releases provided they do not use Council resources, including email, logo or any branding, letterhead or any Council-owned device. Councillors and candidates must make it clear that the views expressed are personal views only, and not the views of the Council.
- d) Councillors are not permitted to comment in an official capacity on any issues raised by the media during the election period. Any comments made to the media must be expressed as personal views only and not the views of Council.
- e) Council resources (Internet access, mobile phones, Council logos) must not be used in connection with setting up or maintaining any social media or online presence as candidates.

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3. Section 123 – Misuse of Position

Pursuant to section 123 of the Act Councillors must not misuse their position to:

- a) Gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person.
- b) Cause, or attempt to cause, detriment to the Council or another person.

Circumstances that constitute a misuse of position, include:

- a) Making improper use of information acquired as a result of a position held.
- b) Disclosing information that is confidential information.
- c) Directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff.
- d) Exercising, or purporting to exercise, a power, duty or function with no authority to do so.
- e) Using public funds or resources in an improper or unauthorised manner.
- f) Participating in a decision on a matter in which the person has a conflict of interest.

4. GOVERNANCE

4.1. Owner

The Manager Governance, is responsible for ensuring this policy is implemented, progress is monitored and is regularly reviewed.

4.2. Review

The Manager Governance will review the policy for any necessary amendments no later than no later than 12 months prior to the commencement of each subsequent general election period. The next review is due October 2027.

4.3. Charter of Human Rights Compliance

It is considered that this Policy does not impact negatively on any rights identified in the Charter of Human Rights and Responsibilities Act 2006.

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