



Ararat Rural City

# Election Period Policy

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## INTENT

In the lead up to an election the Local Government sector adopts a caretaker period to avoid actions and decisions that may be interpreted as influencing voters or binding an incoming Council.

Specific provisions have been incorporated into the Local Government Act 1989 (the Act) that prohibit Council making major policy decisions, or publishing or distributing electoral matter in an “election period”.

The relevant provisions of the Act and definitions are detailed in the Attachment to this Policy.

## POLICY

Ararat Rural City Council is committed to the principle of fair and democratic elections and therefore adopts and endorses the following practices and legislative requirements.

The Election Period Policy has been developed in order to ensure that general elections for Ararat Rural City Council to be held on Saturday 24 October 2020 are conducted in a manner that is fair and equitable, and is publicly perceived as such.

### Election Period

- 1 The election period (or caretaker period) commences morning (12.01am) of 22 September 2020 and continues until 6pm Saturday 24 October 2020, a period of 32 days.
- 2 During the election period the Council will be deemed to be in ‘election caretaker mode’.
- 3 The Chief Executive Officer will ensure that all Councillors and employees are informed of the requirements of this policy.

### Decision Making

- 1 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 decisions that inappropriately bind the incoming Council.
- 2 This includes a commitment to not only comply with the requirements of section 93A of the Local Government Act 1989 (the Act), relating to “**Major Policy Decisions**”, but as well as with the policies specified within this policy relating to “**Inappropriate Decisions**”.
- 3 Council will not hold an ordinary Council Meeting during the election caretaker period.
- 4 Scope exists for Council to hold a special Council Meeting but only in the most urgent or extraordinary circumstances or statutory processes that may arise.

### Major Policy Decisions

- 1 Section 93A of the Act prohibits the making of “Major Policy Decisions” during the election caretaker period,
- 2 In the context of this Policy, a ‘major policy’ decision as defined in section 93A (6) of the Act means any decision:
  - (a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
  - (b) to terminate the appointment of a Chief Executive Officer under section 94;
  - (c) to enter into a contract, the total value of which exceeds whichever is the greater of \$150,000 for goods and services contracts or \$200,000 for works contracts {or such higher amount as may be fixed by Order in Council under section 186(1)} or 1% of the Council’s revenue from rates and charges levied under section 158 in the preceding financial year; and
  - (d) to exercise any power under section 193 - entrepreneurial powers - of the sum assessed in respect of the proposal exceeds whichever is the greater of \$100,000 or 1% of the Council’s revenue from rates in the preceding financial year.
- 3 If Council considers that there are extraordinary circumstances where Ararat Rural City’s 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.

## Inappropriate Decisions

- 1 During the Election Period the Council will follow procedures intended to prevent the making of inappropriate decisions which include decisions that:
  - a. would affect voting in an election; or
  - b. could reasonably be made after the election.

## Misuse of Position

- 1 Councillors cannot use their current position to gain access to information or resources that would otherwise not be available. Councillors and candidates must be given equal access to support and information.
- 2 The penalty for Misuse of Position under Section 76D of the Local Government Act is 600 penalty units or imprisonment for 5 years or both.

## PUBLIC CONSULTATION

- 1 Public consultation means a process that involves inviting individuals, groups or organisations or the community generally to comment on an issue or proposed action or proposed policy, and which includes discussion of that matter with the public.
- 2 Public consultations are best to be avoided during the election period unless they are required under the *Planning and Environment Act 1987*, or section 223 of the Act.
- 3 Consultations may be undertaken during the election period to facilitate the day-to-day business of Council, to ensure matters continue to be proactively managed.
- 4 Consultations will avoid any express or implied links to the election.
- 5 Consultations under statutory provisions should only proceed after express agreement by the relevant Director and then if it relates solely to the normal day-to-day business of Council.

## COUNCIL RESOURCES

- 1 It is an established democratic principle that public resources must not be used in a manner that would influence the way people vote in elections. Council therefore commits to the principle that it will ensure that Council resources are not used inappropriately during a Council election. This includes a commitment to comply with the following procedures in addition to the requirements of section 55D of the Act.
- 2 Council will ensure that due propriety is observed in the use of all Council resources, and Council employees 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 is to be sought from the employees Director.
- 3 Council resources, including offices, support staff, hospitality services, equipment and stationery will be used exclusively for normal Council business during the election caretaker period, and shall not be used in connection with any electioneering activity.
- 4 Reimbursements of Councillors' out-of-pocket expenses during the election caretaker 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.
- 5 No Council events, logos, letterheads, or other Ararat Rural City Council branding should be used for, or linked in any way to, a candidate's election campaign.
- 6 The Chief Executive Officer or any employee should not be asked to undertake any tasks connected directly or indirectly with electioneering.
- 7 Photos or images taken by or provided by Council are not to be used by Councillors for the purposes of electioneering or in support of their election campaign. This applies equally to images on Council websites that may be able to be copied.
- 8 No election material or active campaigning is to be conducted at any Council sponsored events or be displayed in any Council building.
- 9 Allocations on budget for Councillors seminars/training and attendance at conferences are to be **allocated on a pro rata basis** between the commencement of the financial year and the election date, i.e. pro rata basis of 4 months out of 12-month period.
- 10 The Council will also ensure other Ararat Rural City resources are not used inappropriately in ways that may

- influence voting in an election or provide an undue advantage for a candidate. This includes financial, human and material resources.
- (a) Council employees will not undertake an activity that may affect voting in the election;
  - (b) Council employees will not authorise, use or allocate a Council resource for any purpose that may influence voting in the election; and
  - (c) Council employees that feels they are being placed in a compromising situation by a request from a Councillor should politely refer the Councillor to the Chief Executive Officer for clarification on their request.
- 11 Prior to the election period the Chief Executive Officer will ensure that all Council employees are advised in regard to the application of the caretaker procedures.
  - 12 Any 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 Manager and Director before authorising, using or allocating the resource. The Director will decide if the use of Council resources is appropriate or not.
  - 13 In applying these principles, the Council understands that the following will be normal practice during election periods:
    - (a) Public events will only be organised and run if it is totally unavoidable to conduct such events during the caretaker period and then only with the express permission of the Chief Executive Officer;
    - (b) Speeches for Councillors will only be prepared by Council officers 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;
    - (c) Media services, including media releases, will not be provided for Councillors during the election period;
    - (d) Media releases will not mention or quote any Councillor(s) during the caretaker period;
    - (e) Councillor Newsletters will not be printed by Council during the election period; and
    - (f) Neither the Council logo nor Council stationery will be used by Councillors in any way that relates to the election.
  - 14 Equipment and facilities provided to Councillors for the purpose of conducting normal Council business will not be used for campaigning purposes.
  - 15 Where Councillors have Council funded services, such as mobile phones, land lines and internet connections, and where it is impractical for Councillors to discontinue their use of these during the election, Councillors will reimburse the Council for usage of those services during the caretaker period that exceeds normal usage levels.
  - 16 Councillors may wish to consider the specific ways to administer this procedure. For instance, Councillors may decide to use a private mobile phone for all election enquiries and publicise such on election literature.

## INFORMATION

- 1 The Council recognises that all election candidates have rights to information from the Council administration. However, 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 officers that might be perceived to support election campaigns, and there shall be complete transparency in the provision of all information and advice during the election caretaker period.
- 2 Information and briefing material prepared by employees for Councillors during the election caretaker period will relate only to factual matters or to existing Council services to assist Councillors in conducting normal day to day activities.
- 3 An Information Request Register will be maintained by the Corporate Strategy, Risk & Governance Directorate commencing on the opening of nominations. This Register will be a public document (available for inspection) that records all requests for information of a non-election nature by all candidates, and the responses given to those requests.
- 4 Responses to candidates' requests will be provided by Managers, Directors or the Chief Executive Officer. Only information that can be reasonably accessed will be released.
- 5 Section 76D of the Act prescribes serious penalties for any Councillor who inappropriately makes use of their position or information obtained in the role of Councillor, to gain an advantage.
- 6 Any Freedom of Information (FoI) applications lodged during the election period on matters such as expenses, costs etc. regarding current Councillors will be dealt with where possible outside of the election period (The FoI Act specifies a 30 day period in providing a response to a FoI application).

## COMMUNICATION

- 1 Council communication will not be used in any way that might influence the outcome of a Council election.
- 2 During the election caretaker period, no employee will initiate any public statement that relates to an election issue. Public statements are not only formal press releases but also verbal comments at meetings, functions and events where attending as part of their Council role.

- 3 Any requests for media advice or assistance from Councillors during the election period will be channelled through the Chief Executive Officer.
- 4 In response to media inquiries the Chief Executive Officer and Executive Leadership Group (ELG) will only provide information that relates to current services and operations.
- 5 In the election period no media releases will be issued quoting or featuring the Mayor or Councillor(s).
- 6 During the election caretaker period, Council initiated communications shall be restricted to the communication of normal Council activities.
- 7 No media advice or assistance will be provided to Councillors in relation to election campaign matters.
- 8 No publicity will be provided that involves specific Councillors.
- 9 Councillors should not use their position as an elected representative or their access to Council employees and other Council resources or information in support of an election campaign. This includes photos or images provided by Council for past Council activities.
- 10 Sessions with the local media will be restricted to the communication of normal Council activities and responding to questions not involving the election or possible election outcomes.
- 11 Publicity of Council events (if any during the election period) will be restricted to the communication of normal Council activities.
- 12 Councillor participation at Council sponsored events (if any during the election period) should not be used to gain attention in support of an election campaign. Council sponsored events includes launches, events, and any other public forum outside of the normal Council meeting cycle – the easiest way to deal with these is to simply not have them during this time period.

## COUNCIL PUBLICATIONS

- 1 Section 55D of the Act places limitations on Council from printing, publishing or distributing publications during an election period. This is to ensure that Council does not utilise public funds that may influence or be seen to influence people's voting intentions.
- 2 Council must not print, publish or distribute a publication during the election period unless it has been certified in writing by the Chief Executive Officer.
- 3 The Chief Executive Officer must not certify a publication that contains electoral matter – it is an offence for the Chief Executive to contravene this requirement.
- 4 Electoral matter is any matter that is intended or likely to affect voting in an election.
- 5 The certification by the Chief Executive Officer must be in writing and cannot be delegated. Certification wording – over the Chief Executive Officer's signature - should be as follows *"Certified by the Chief Executive Officer in accordance with section 55D on the Local Government Act 1989"*
- 6 The interpretation of section 55D is extremely broad. Even though section 55D refers specifically to "an advertisement, handbill, pamphlet or notice" it has been interpreted to refer to documents produced for the purpose of communicating with the community, including:
  - Council newsletters
  - Advertisements and notices e.g. job advertisements, public notices of contracts etc.
  - Media releases
  - Leaflets and brochures
  - Mail-outs to multiple addresses

**All these publications will require certification by the Chief Executive Officer provided that the CEO is certain it does not contain electoral matter.**

- 7 Section 55D also applies to the publication of material specified in this Policy published on Council's website.
- 8 The recommended practice – in line with State and Federal Governments – is where possible to avoid all publication activity during the election period except where it is essential for the conduct of Council operations.
- 9 A number of Council publications with references to either current Councillors or candidates, both on website and public display will be withdrawn from such display during an election period.
- 10 During the election period Council's website will not contain material which is precluded by this Policy or the statutory requirements relating to publications. Any references to the election will only relate to the election process.
- 11 Profiles of current Mayor and Councillors will be removed from Council's website during the election period but retain their contact details for their day-to-day role as Councillor ie names, photos and mobile numbers.
- 12 Any new material published on Council's web site during the election period that may be considered to be an advertisement, handbill, pamphlet or notice must also be subject to the certification process. Council agendas, minutes and the annual report are considered exempt from certification.

- 13 Council is required by the Act to produce an annual report, and the *Annual Report 2018/2019* may 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 but will fulfil its statutory obligations on reporting matters. It may also be required for the Annual Report to be the subject of a Special Council Meeting in October to confirm the completion of the Annual Report.
- 14 Social Media – any publication on social media sites such as Facebook or twitter which are auspiced by Council will also require certification by the Chief Executive Officer. Similar requirements apply to Council blog sites.
- 15 Any matter that exists on Social Media pages that could be viewed as electoral matter will be removed including YouTube videos or photos of Councillors at publicity events, as is done with Councillor profiles on Council websites.

Social media activity during the caretaker period is to conform with the following:

- On all Facebook pages the “post comments’ from all” facility to be disabled.
- Facebook posts to be kept to minimum, normal day-to-day activities only.
- No launches or announcements of any new projects, policy initiatives, or programs.
- You Tube videos to be removed and suspended during the period.
- No matter is permitted that may be construed as electoral matter – sites should be reviewed to ensure there is none.
- No hosting or responding to political content at all is permitted.
- During this time ensure moderation of Twitter and Facebook sites.
- Keep Twitter updates to a minimum – normal day-to-day business only.

## ASSISTANCE TO CANDIDATES

- 1 The Council affirms that all candidates for the Council election will be treated equally.
- 2 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.
- 3 All election related enquiries from candidates, whether sitting Councillors or not, will be directed to the Returning Officer or, where the matter is outside the responsibilities of the Returning Officer (for instance CEO Lists), to the Chief Executive Officer or a designated Council officer.

## CARETAKER STATEMENT - SPECIAL COUNCIL MEETING REPORTS

- 1 As Council will not hold an ordinary Council Meeting this section only applies to reports for a Special Council Meeting, if such a meeting is called.
- 2 In order to facilitate compliance with its commitment to ensuring appropriate decision-making during elections, Council endorses the following procedure:

During the election period, the Chief Executive Officer will ensure that a “Caretaker Statement” is included in every report submitted to a Special Council meeting (if required) for a decision.

The “Caretaker Statement” will specify one of the following:

- (a) “The recommended decision is not a “Major Policy Decision”, as defined in section 93A of the Local Government Act 1989, or a “Significant Decision” within the meaning of this policy.”
- (b) “The recommended decision is not a “Major Policy Decision” within the context of Local Government Act 1989. The recommended decision is not an “Inappropriate Decision” within the meaning of this policy, but

an exception should be made for the following reasons [insert reasons for making an exemption]”.

- (c) “The recommended decision is to seek an exemption from the Minister because the matter requires a “Major Policy Decision” within the meaning of section 93A of the Local Government Act 1989”.
- (d) “The recommended decision is a “Major Policy Decision”, as defined in section 93A of the Local Government Act 1989, but an extraordinary circumstances exemption was granted by the Minister for Local Government on [insert date]”.

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

## DISCLAIMER

This Policy has been written to provide a guide only for Council employees, Councillors and candidates and is not a substitute for legal advice. Individuals should seek their own independent advice if they are unsure about any aspect of the Local Government Act 1989 and associated regulations in relation to the election period.

## ADMINISTRATIVE UPDATES

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Council department, a change to the name of a Federal or State department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be by resolution of Council.

## TERMS/DEFINITIONS

| Term | Definition                |
|------|---------------------------|
| ARCC | Ararat Rural City Council |
| FoI  | Freedom of Information    |

## REFERENCES

Local Government Act 1989  
Relevant sections as follows:

|                       |  |
|-----------------------|--|
| <b>Section 3 (1)</b>  | <b>Election period</b><br>In relation to an election, means the period that –<br>(a) starts on the last day on which nominations for that election can be received; and<br>(b) ends at 6pm on election day.<br>Note <b>Election Caretaker Period</b> has the same meaning.   |
|                       | <b>Electoral advertisement, handbill, pamphlet or notice</b><br>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.   |
|                       | <b>Publish</b><br>means publish by any means including by publication on the Internet.   |
| <b>Section 3 (1A)</b> | In this Act, “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 returning officer for the purposes of conducting an election.<br>Note printed electoral matter has the same meaning.  |
| <b>Section 3 (1B)</b> | 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:<br>(a) the election; or<br>(b) a candidate in the election; or<br>(c) an issue submitted to, or otherwise before, the voters in connection with the election.   |
| <b>Section 55D</b>    | <b>Prohibition on Council (Publish Material)</b><br>1 A Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been <b>certified in writing by the Chief Executive Officer</b> .<br><br>For the purposes of subsection (1), the publication of a document of a kind specified in that subsection does not include-<br>(a) Publication of any document published before the commencement of the election period; and<br>(b) Publication of any document required to be published in accordance with, or under, any Act or regulation. |

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|                           | <p><b>Note</b> - See definitions of publish in section 3(1) and document in section 38 of the “Interpretation of Legislation Act 1984”.</p> <p>2 The Chief Executive Officer must not intentionally or recklessly certify an electoral advertisement, handbill, pamphlet or notice during the election period unless it <b>only contains information about the election process.</b></p> <p>Penalty: 60 penalty units</p>   |
| <p><b>Section 76D</b></p> | <p><b>Misuse of Position</b></p> <p>1 A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position:</p> <ul style="list-style-type: none"> <li>(a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or</li> <li>(b) to cause, or attempt to cause, detriment to the Council or another person.</li> </ul> <p>Penalty: 600 penalty units or imprisonment for 5 years or both</p> <p>2 For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee include:</p> <ul style="list-style-type: none"> <li>(a) making improper use of information acquired as a result of the position he or she held or holds; or</li> <li>(b) disclosing information that is confidential information within the meaning of section 77(2); or</li> <li>(c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or</li> <li>(d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or</li> <li>(e) using public funds or resources in a manner that is improper or unauthorised; or</li> <li>(f) failing to disclose a conflict of interest as required under this Division.</li> </ul> <p>3 This section:</p> <ul style="list-style-type: none"> <li>(a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of special committees; and</li> <li>(b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.</li> </ul>  |
| <p><b>Section 93A</b></p> | <p><b>Conduct of Council During an Election Period</b></p> <p>1 Subject to this Section, a Council, a special committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.</p> <p>2 If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.</p> <p>3 If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.</p> <p>4 A major policy decision made in contravention of this section is invalid.</p> <p>5 Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.</p> <p>6 In this section, a “<b>major policy decision</b>” means any decision –</p> <ul style="list-style-type: none"> <li>(a) relating to the employment or remuneration of a Chief Executive Officer under Section 94, other than a decision to appoint an acting Chief Executive Officer;</li> <li>(b) to terminate the appointment of a Chief Executive Officer under Section 94;</li> <li>(c) to enter into a contract the total value of which exceeds whichever is the greater of             <ul style="list-style-type: none"> <li>i. \$100,000 or such higher amount as may be fixed by Order in Council under section 186(1); or</li> </ul> </li> </ul> |

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|                    | <ul style="list-style-type: none"> <li>ii. 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year;</li> <li>(d) to exercise any power under Section 193 if the sum assessed under Section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100,000 or 1% of Council's revenue from rates and charges levied under section 158 in the preceding financial year.</li> </ul>   |
| <b>Section 93B</b> | <p><b>Council to adopt an election period policy</b></p> <ol style="list-style-type: none"> <li>1 A Council must prepare, adopt and maintain an election period policy in relation to procedures to be applied by Council during the election period for a general election.</li> <li>2 A Council must prepare and adopt an election period policy as required by subsection (1) –             <ol style="list-style-type: none"> <li>(a) by 31 March 2016; and</li> <li>(b) following the general election on 22 October 2016, continue to maintain the election period policy by reviewing and, if required, amending the policy not later than 12 months before the commencement of each subsequent general election period.</li> </ol> </li> <li>3 An election period policy must include the following:             <ol style="list-style-type: none"> <li>(a) procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the election period before a general election;</li> <li>(b) limits on public consultation and the scheduling of Council events;</li> <li>(c) procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.</li> </ol> </li> <li>4 A copy of the election period policy must:             <ol style="list-style-type: none"> <li>(a) be given to each Councillor as soon as practicable after it is adopted; and</li> <li>(b) be available for inspection by the public at the Council office and any district offices; and</li> <li>(c) be published on the Council's Internet website maintained under Section 82A.</li> </ol> </li> <li>5 In this section, inappropriate decisions made by a Council during an election period includes any of the following:             <ol style="list-style-type: none"> <li>(a) decisions that would affect voting in an election; and</li> <li>(b) decisions that could reasonably be made after the election.</li> </ol> </li> </ol> |
| <b>Section 95</b>  | <p><b>Conduct Principles</b></p> <p>Council staff must in the course of their employment:</p> <ol style="list-style-type: none"> <li>(a) act impartially;</li> <li>(b) act with integrity including avoiding real or apparent conflicts of interest;</li> <li>(c) accept accountability for results; and</li> <li>(d) provide responsive service.</li> </ol>   |