



Ararat Rural City

# Election Period Policy 2020

## DOCUMENT CONTROL

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Chief Executive Officer  
Councillors

Governance and Administration Coordinator

## 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 2020 (the Act) that prohibit Council making some 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 (12.01 am) of Tuesday 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 comply with the requirements of section 69 of the Act which prohibits specific Council decisions during an election period.
- 3 Council will not hold a scheduled Council Meetings during the election caretaker period.
- 4 Scope exists for Council to hold an unscheduled Council Meeting but only in the most urgent or extraordinary circumstances or statutory processes that may arise.

### Prohibited Decisions

Council is prohibited from making any Council decision:

- (a) During the election period for a general election that:
  - (i) 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
  - (ii) 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
  - (iii) the Council considers could be reasonably deferred until the next Council is in place; or
  - (iv) the Council considers should not be made during an election period; or
- (b) during the 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.

## What is a Council Decision?

A **Council decision** means the following:

- (a) a resolution made at a Council meeting;
- (b) a resolution made at a meeting of a delegated committee; or
- (c) the exercise of a power or the performance of a duty or function of Council by a member of Council staff (which includes the Chief Executive Officer) or a Community Asset Committee under delegation.

## 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 1989 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 *Local Government Act 1989*.
- 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 Chief Executive Officer 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.
- 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 Chief Executive Officer.
- 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. Council employees must adhere to the following:
- (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 who believe 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 Chief Executive Officer before authorising, using or allocating the resource. The Chief Executive Officer 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 Governance Unit 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 the Chief Executive Officer. Only information that can be reasonably accessed will be released.
- 5 Section 76D of the *Local Government Act 1989* 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 (Fol) 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 Fol Act specifies a 30 day period in providing a response to a Fol 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 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 Council will limit printing, publishing and 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 authorised in writing by the Chief Executive Officer.
- 3 The Chief Executive Officer must not authorise a publication that contains electoral matter.
- 4 Electoral matter is any matter that is intended or likely to affect voting in an election.
- 5 The authorisation by the Chief Executive Officer must be in writing and cannot be delegated. Authorisation wording – over the Chief Executive Officers signature - should be as follows "*Authorised by the Chief Executive Officer in accordance with the Election Period Policy*"

6 The following documents are Council publications:

- 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 authorisation by the Chief Executive Officer provided that the CEO is certain they do not contain electoral matter.**

7 This Policy 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 the 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 2019/2020* 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 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 authorisation 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 Council meeting (if required) for a decision.

The “Caretaker Statement” will specify the following:

“The recommended decision is not a “Prohibited Decision”, as defined in section 69 of the Local Government Act 2020.”

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

## 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 Act 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
Act	Local Government Act 2020
Fol	Freedom of Information

## REFERENCES

In accordance with the Local Government Act 2020 and the Local Government Act 1989 transitional arrangements, the following sections of the Local Government Act 1989 are currently still in force.

<p><b>Section 76D</b></p> <p><i>Provision to be repealed on 24 October 2020</i></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 95</b></p> <p><i>Provision to be repealed 1 July 2021</i></p>	<p><b>Conduct Principles</b></p> <p>Council staff must in the course of their employment:</p> <ul 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> </ul>
<p><b>Section 223</b></p>	<p><b>Right to make Submission</b></p> <p>Section 223 is not being repealed and has limited ongoing application.</p>