

Election Period Policy

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1. DEFINITIONS

The Act	The <i>Local Government Act 1989</i> shall henceforth be referred to as <i>The Act</i>
Election period	<p>This period is defined by <i>The Act</i> to commence on the last day on which nominations for the election can be received, and ends at 6.00 PM on Election Day.</p> <p>Therefore, the 2016 election period commences at 12:01am on Wednesday 21 September 2016 and ends at 6.00 PM on Saturday 22 October 2016, a period of 32 days.</p>
Electoral matter	Broadly speaking, electoral matter includes any matter that is intended or likely to affect voting in an election. It includes matter that refers to the election, a candidate or to an electoral issue. An ongoing council / policy issue may or may not be electoral matter, depending on the circumstances.
Major policy decisions	<p>Major Policy decisions are defined by the Act to be decisions:</p> <ul style="list-style-type: none"> i) Relating to the employment or remuneration of a Chief Executive Officer (CEO) under s.94 of <i>The Act</i>, other than a decision to appoint an acting CEO; ii) To terminate the appointment of a CEO under s.94 of <i>The Act</i>; iii) To enter into a contract the total value of which exceeds whichever is the greater of \$150,000 or 1% of the Council's revenue from rates and charges in the preceding financial year: (in 2011/12 the amount of 1% of Council's revenue from rates and charges was \$311,670); and iv) To exercise any entrepreneurial power under s.193 of <i>The Act</i>, if the sum assessed under s193(5A) of the Act in respect of the proposal exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates and charges in the preceding financial year.
Significant policy decisions	<p>During the caretaker period, Council will avoid making decisions that significantly affect the municipality and unreasonably bind the incoming Council. Significant decisions include:</p> <ul style="list-style-type: none"> i) Irrevocable decisions that commit the Council to substantial expenditure or major actions; ii) Irrevocable decisions that will have a major impact on the community or municipality.
Publications	Publications are defined as advertisements, pamphlets, handbills, press releases, notices, or similar and include electronic information and web based productions.

2. INTRODUCTION

There are statutory requirements under *The Act* that Council must follow during Council election periods. These 'caretaker' provisions prohibit certain actions taken by either Council and/or Councillors, including prohibiting the Council from making defined major policy decisions, or publishing or distributing electoral matter in an election period. The provisions also prohibit Councillors from misusing their position.

3. REFERENCE TO CURRENT OR PREVIOUS LEGAL /COUNCIL PLAN / POLICY

- The *Local Government Act 1989*
- Councillor Code of Conduct
- Staff Code of Conduct

4. SCOPE

This policy applies to all Indigo Shire Council councillors and staff.

5. PURPOSE

The purpose of this policy is to ensure that the 2016 Indigo Shire Council elections are conducted in a manner that is fair and equitable, and is perceived as such by the public. It is intended to assure the community that Council will not use public resources in election campaigning or make major decisions that may bind the incoming Council, while continuing to function on behalf of the community.

6. POLICY DETAILS

6.1 Major policy decisions

During the election period, Council will not make major policy decisions, as defined under s.93A of *The Act*.

Further, during the election period the Council will not make inappropriate decisions that commit Council to substantial expenditure or major actions, significantly affect the shire, and unreasonably bind the incoming Council. The type of decisions that will not be made include:

- Allocating community grants and direct funding
- Major planning scheme amendments
- Changes to strategic objectives and strategies in the Council Plan
- Any other decision will only be considered if absolutely necessary for operational purposes or pursuant to statutory requirements.

If Council considers that there are extraordinary circumstances where Indigo's community would be significantly disadvantaged by refraining from making a particular major policy decision, the Council will, by resolution, request an exemption from the Minister for Local Government in accordance with s.93A(2) of *The Act*.

6.2 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.

- It is important that all councillors have access to the Council's communication resources to enable them to fulfil their elected roles. However they must not be used in support of a candidate's election campaign.
- Council media, publicity and communications will be restricted to promoting normal Council activities and services and for informing residents about the conduct of the election.
- A Council employee must not make any public statement that could be construed as influencing the election.
- Council logos, letterheads, or other branding must not be used for, or linked in any way to, a candidate's election campaign.

6.2.1 Council Media Releases

- The CEO, or nominated officer, will be the official spokesperson/s in any council media release. All media releases will require CEO certification.
- A Councillor or candidate may issue their own media release in their own name and using their own resources (i.e. not using council staff or resources).

6.3 Publications

The term 'publication' should be read broadly to include electronic and web-based information.

6.3.1 Prohibition on Publishing Material during Caretaker Period

Council will not print, publish or distribute material that is electoral matter during an election period, as specified by *s55D* of the *Act*. Electoral matter is broadly defined to be matter which is intended or likely to affect voting in an election. 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.
- Publicises the achievements of the elected council.

6.3.2 Certification of Publications

All publications, as defined, must be certified by the CEO. A CEO must not certify a publication that contains electoral matter, unless that material is only about the election process.

The CEO's certification must be in writing and cannot be delegated. Copies of all certifications and certified documents must be retained on Council records. The CEO will ensure that Council staff are informed about the requirements of *s55D* of the *Act* to avoid staff inadvertently committing offences.

6.3.3 Council and Committee Agendas, Minutes and Reports

- All Council and Special Committee meetings may be suspended at the discretion of the Chief Executive Officer.
- For any Council or Special Committee meeting that is convened during the caretaker period, the Chief Executive Officer will ensure that a “Caretaker Statement” is included in every report submitted to the Council, or to a Special Committee of Council for a decision.

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

- i) “The recommended decision is not a “Major Policy Decision” as defined in s.93A of *The Act*, or a “Significant Decision” within the meaning of the Election Period Policy
 - ii) “The recommended decision is not a “Major Policy Decision” as defined in s.93A of *The Act*. The recommended decision is a “Significant Decision” within the meaning of the Caretaker Policy, but an exception should be made for the following reasons: **[insert reasons for making an exemption]**”.
 - iii) “The recommended decision is to seek an exemption from the Minister because the matter requires a “Major Policy Decision” within the meaning of s.93A of *The Act*”.
 - iv) “The recommended decision is a “Major Policy Decision” as defined in s.93A of *The Act*, but an extraordinary circumstances exemption was granted by the Minister for Local Government on **[insert date]**”.
- Agenda papers and Minutes of Council and Committee meetings do not require certification by the Chief Executive Officer unless they are printed or published for wider distribution than normal.
 - Items submitted for Community Participation Time will be reviewed to ensure that they comply with the principles of *The Act* and this policy, and may be amended accordingly before publication.

6.3.4 Annual report

Council is required by the Act to produce an annual report. The 2015 - 2016 Annual Report must be submitted to the Minister by 30 September 2016. Given that this falls within 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 considered exempt from certification by the Chief Executive Officer as it is not considered to be an ‘advertisement, handbill, pamphlet or notice’.

However, the publication of an extract or summary of the Annual Report is likely to be regarded as a pamphlet and should be subject to certification by the Chief Executive Officer.

6.3.5 Reference to Councillors and Candidates

Any references to councillors or candidates in Council publications printed, published or distributed during an election period must not include promotional text. 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.

6.3.6 Website

Material published on Council's website prior to the caretaker 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 is considered to be electoral matter. 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 (i.e. profiles) or photographs. Any material published on Council's website during the caretaker period must be certified by the Chief Executive Officer.

6.3.7 Social Media

Councillors will not be profiled on council social media during the caretaker period. Prior to the election period:

- Council's social media will be reviewed to identify anything that might be construed as electoral matter. Such items will be removed prior to the election period.
- Material to be issued in the election period will be vetted by the Director Corporate & Community Services to determine if it requires certification.
- A statement will be posted on all Council social media sites informing the general public that posting a notice during the election period cannot be responded to, or published, should the posting be political in nature. Council's social media sites will be monitored for electioneering material and any inappropriate posts will be removed as soon as practicable

6.4 Events and functions

Councillors must seek CEO approval to attend events and functions during the election period. No election material or active campaigning is to be conducted at Council sponsored functions or events.

6.4.1 Material Promoting Events and Functions

Material that is printed or disseminated during the election period to publicise a function or event must be subject to the certification process.

6.4.2 Speeches

Councillors may continue to make speeches at Council organised or sponsored events and functions during the election period subject to the prior approval and certification by the CEO.

Any speech made by a councillor must not be printed or published.

6.5 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 fulfil their elected roles. In order to ensure the proper use of Council resources during the election period the following will apply:

6.5.1 Use of Council Resources and Staff

- 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.
- Council staff must not be asked to undertake any tasks connected with a candidate's election campaign.
- Prior to caretaker period the Chief Executive Officer will ensure that all members of Council staff are advised in regard to the application of the caretaker procedures.
- Council resource usage may be monitored during the caretaker period.

6.5.2 Councillor Expense Reimbursement

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.

6.6 Information

6.6.1 Sitting Councillors Receiving Information

It is important that sitting councillors continue to receive information that is necessary to fulfil their elected roles. Council recognises that all election candidates have rights to information from the Council administration, subject to the Information Privacy Act 2000 (VIC). 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.

Councillors shall not request or receive information or advice from Council staff to support election campaigns, and there shall be complete transparency in the provision of all information and advice during the election period.

All requests for information, either from a sitting councillor or a candidate, must be directed to the CEO.

6.6.2 Candidates' Access to Information

All candidates for the Council election must be treated equally. Any advice to be provided to candidates as part of the conduct of the Council election must be provided equally to all candidates.

All election process-related enquiries from candidates, whether sitting councillors or not, must be directed to the Returning Officer or, where the matter is outside the responsibilities of the Returning Officer, to the CEO or Governance & Risk team.

6.7 Public Consultation

Due to the potential for a subject matter to become contentious or politically sensitive in the course of the election period, public consultation will generally not be conducted during this time. There may be rare occasions, however, where consultation is permitted for issues deemed as vital to the business of Council. Such consultations shall only be held with the CEO's approval. Consultations will avoid express or implicit links to the election. Council will not continue or commence consultation on any contentious or politically sensitive matter after the date on which nominations close.

7. 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 *Local Government Act, 1989* in relation to the election period.

8. ATTACHMENTS

Extract from Local Government Victoria's *Governance Practice Note on Election Caretaker Arrangements* – attached as Appendix A is the guide on "Council publications and resources in elections".

9. RELATED POLICIES

- Councillor Code of Conduct
- Code of Conduct & Ethical Behaviour Handbook

10. RELATED LEGISLATION

- *Local Government Act 1989*
- *The Victorian Charter of Human Rights and Responsibilities Act 2006*

11. COMMUNICATION

- Discussion at Staff Meeting or specific training session for all staff.
- 'I Spy' article
- Email to staff & Councillors
- Policy to be placed on 'The Fridge' & Indigo Shire Council Website

Appendix A

Local Government Victoria Practice Note – 'Election Caretaker Arrangements' 2016