

ATTACHMENT TO AGENDA ITEM

Ordinary Meeting

20 August 2019

Agenda Item 8.4 Election Caretaker Provisions Policy

Attachment 1 Election Caretaker Provisions Policy 48

GREATER SHEPPARTON CITY COUNCIL

Policy Number 37.POL4

Election Caretaker Provisions Policy

Version 1.2

Adopted By Council **20 August 2019**

Business Unit:	Corporate Governance
Responsible Officer:	Team Leader Governance
Approved By:	Chief Executive Officer
Next Review:	Within Twelve months of a General Election

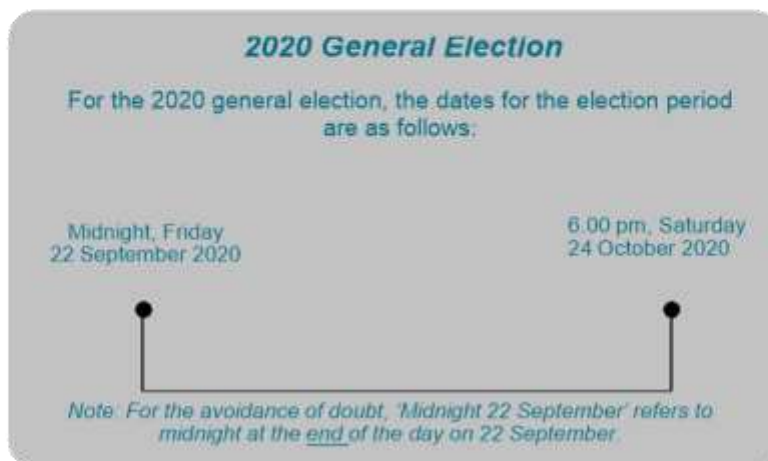
DOCUMENT REVISIONS

Version #	Summary of Changes	Date Adopted
1.1		21/08/2016
1.2	Reviewed to comply with S93B(2)(b) of the <i>Local Government Act 1989</i> . Sections 1.3, 1.4, 2.1,2.2, 2.3, 3.1, 5, 7, 13 and 15 added.	20 August 2019

Election Caretaker Provisions Policy

PURPOSE

Greater Shepparton City Council is committed to implementing clear and transparent caretaker provisions during election periods. This policy will apply to the statutory election period prior to a general election or by-election. The Chief Executive Officer (CEO) or the Governance department will advise all Councillors and staff of the commencement date for any election period applying to the Council. The election period commences at midnight on the last day of nominations and ends at 6.00pm on the day of the election to which the election period applies.

**OBJECTIVE**

The will of the people, expressed through democratic elections is the cornerstone of democracy at all levels of government, including local government. A guiding principle of the exercising of this free will is that outgoing governments must safeguard the authority of incoming governments. This principle is applied through the implementation of a caretaker period prior to an election. During a caretaker period, an outgoing government shall not make any decisions which could be considered to unreasonably bind an incoming government.

Unlike other levels of government in Australia, where caretaker provisions are established by convention rather than law, the *Local Government Act 1989* (the Act) requires Councils to comply with special arrangements during Council elections to ensure the probity of the election process. These include statutory requirements relating to decision making, limitations on publications and the use of Council resources.

While these statutory requirements establish limits on what a Council may and may not do, they represent the minimum caretaker provisions which a Council must apply and they do not address the ways in which a Council could or should modify its usual actions and processes during an election period.

SCOPE

This Policy details the caretaker provisions which are to be followed by all Councillors and Council Officers during an election period. Councillors and Council Officers need to be aware that severe penalties apply to breaches of the Act during an election period. Familiarity and compliance with the provisions detailed in this Policy will significantly reduce the risk of an unintentional breach of the Act and give the community confidence that the Council is acting in an ethical manner during election periods.

DEFINITIONS

Reference term	Definition
Caretaker provisions:	The special arrangements and processes which will be applied during an election period
Election period:	The 32 day period which starts at midnight on the last day of nominations and ends at 6.00pm on election day.
Election material:	Material which is intended or likely to influence voting in an election, such as: <ul style="list-style-type: none"> • The views, strengths or weaknesses of any candidate • Advocacy of the policies of the Council or of a candidate • Claims made by a candidate and/or responses to such claims • The achievements of the elected Council.
Emergency:	As defined in the Emergency Management Act 1986
Greater Shepparton City Council:	Council and the services it provides — eg. Shepparton Art Museum (SAM), Riverlinks, Aquamoves, KidsTown, Childcare Centres, Visitor Centre etc.
Major policy decision:	any decision (by Council, Delegation, Committees or Council Staff): <ul style="list-style-type: none"> • relating to the employment or remuneration of the Chief Executive Officer under section 94 of the Act, other than a decision to appoint an acting Chief Executive Officer; • to terminate the Chief Executive Officer under section 94 of the Act; • to enter into a contract, the total value of which exceeds whichever is the greater of - <ol style="list-style-type: none"> a) \$100 000 or such higher amount as may be fixed by Order in Council under section 186(1); or b) 1% of Councils revenue from rates and charges levied under section 158 in the preceding financial year (currently \$796,721) • 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 the Council's revenue from rates and charges levied under section 158 in the preceding financial year • Entrepreneurial ventures • The allocation of community grants or other forms of direct funding for community organisations • Major planning scheme amendments • Significant changes to Council plan or budgets
Publication:	Any advertisement (including job, television and radio advertisements), pamphlet, newsletter, bulk letter or email with more than 20 addressees, handbill, press release, social media post on a Council site, or as a Council representative on any other site, website change, report, master plan, submission to external bodies which will be made public, notice or similar type document, whether in electronic or hard copy format. For the purposes of this Policy, the Council's annual report and the Council's meeting agendas and minutes are not considered to be publications for the purposes of certification.

POLICY**1. Decision Making**

During an election period, the Council will not make any major policy decisions which could be seen to unreasonably bind an incoming Council unless extraordinary circumstances require such a decision to be made and then, only with the express written consent of the Minister for Local Government.

Council's Meeting Agendas and Minutes are not considered to be publications for the purposes of this Policy, however during an election period; all Council agenda reports are to be vetted by the CEO to ensure they do not represent major policy decisions. Once approved, they may be incorporated into the relevant agenda. The following statement will be applied to each agenda and minutes document:

Caretaker Statement

The recommendations contained within this (agenda / minutes) document do not present any 'major policy decision', as defined in either section 93A of the *Local Government Act 1989* or the Council's adopted Election Caretaker Provisions Policy.

Agenda papers and minutes of Advisory and Special Committee Meetings do not require certification by the CEO, unless they are printed or published for a wider distribution than normal.

1.1 Notices of Motion

Councillors will be discouraged from raising Notices of Motion or Urgent Business during the election period. The CEO may reject any matter that he or she believes to contain election material or constitutes a major policy decision, in accordance with the *Local Government Act 1989*.

1.2 Public Question Time

Public Question Time will be suspended at all Council Meetings held during the election period.

Any questions received during the election period will be deferred to the first Ordinary Meeting of the new Council.

1.3 Attendance at Special and Advisory Committee Meetings

During an election period, Councillors will be discouraged from attending any Special or Advisory Committee Meeting for which that Councillor has been appointed as a representative.

Officers will endeavor to schedule these meetings outside of the election caretaker period where possible.

1.4 Community Grants and Sponsorship

Council will continue to receive and accept applications for grants and sponsorship during the election period, however a decision will not be made until after the election.

There will be no promotion of any new funding streams during the election period. If promotion commenced prior to the election period, it is permitted to proceed during this period.

2. Council Publications

The Council will not publish any publications during an election period, unless in the opinion and at the sole discretion of the CEO, it is appropriate to do so and the publication does not contain any election campaign material which would be prohibited by the Act.

All publications considered necessary for publication are to be approved and certified by the CEO prior to publication. The approval and certification procedure is contained in *Publications during an Election Period* Procedure and must be applied without exception.

Documents permitted or required under legislation (such as rates notices, food premises registrations and parking fines) are not publications for the purpose of the prohibition under Section 55D of the Act and do not require certification.

2.1 New Publications

New publications to be printed, published or distributed during the election period must first be certified by the Chief Executive Officer personally.

The certification by the Chief Executive Officer will be in writing on or affixed to a copy of the publication and be in one of the following forms:

'Certified by the Chief Executive Officer in accordance with Section 55D of the Local Government Act 1989'.

'Certified pursuant to s. 55D of the Local Government Act 1989'

Copies of all certified documents will be retained on Council records.

Publications which require certification may include:

- Brochures, pamphlets, handbills, flyers, magazines and books
- Reports (other than Council Meeting agenda papers and minutes)
- Advertisements and notices, except newspaper notices of meetings
- Social media publications
- Emails with multiple addresses, used for broad communication with the community
- Mass mail outs or identical letters sent to a large number of people by or on behalf of Council
- Media releases
- Material to publicise a function or event
- Any publication or distribution of councillors' speeches

2.2 Council Publications Including Councillor Information

References to Councillors who are standing for re-election in Council publications printed, published or distributed during the election period could be considered electoral matter and will be carefully vetted during the certification process.

2.3 Existing Publications

Existing publications, including material published on Council's website in advance of the election period, are not subject to certification requirements.

Existing publications will be reviewed at the start of the election period. Publications or material which is prominently displayed and might be regarded as likely to influence how people vote may be temporarily removed from display. Any material so removed may still be provided to members of the community upon request.

2.4 Annual Report

The Council's annual report is not considered to be a publication for the purposes of certification. However, should an annual report be published during an election period, the CEO is to ensure that it does not contain any electoral material.

The Mayor's message may still be included in the annual report during an election year, however the content must be limited to factual statements on the Council's achievements as a whole, and must not contain any personal views, opinions or special achievements of the Mayor or Councillors.

Information referring to specific Councillors will be limited to names, titles, contact details, memberships of special committees and other bodies to which they have been appointed by Council.

The annual report exemption does not apply to the publication of an extract or summary of the annual report. Any such document is regarded as a pamphlet and would require certification by the CEO.

3. Council Website

Material which is already on the Council's website prior to an election period can generally remain there without certification. Councillor profiles will be removed from the website during an election period, although contact details will be retained. Any information prominently displayed on the website that might be reasonably regarded as electoral material will be removed, unless it relates to the election process.

Governance will review all council websites and remove any content deemed to contain election material.

No new material will be published on any of Councils website during the election period, with the exception of agendas and minutes for Council Meetings.

A statement will be published on all websites advising that council is in caretaker period, and no new information will be published until after the election.

3.1 Internal Publications and Intranet

The publication of internal newsletters and intranet information, including instruction for the election period, policy and procedure, is permitted and will continue as normal during an election period. The promotion of Councillors, candidates or political parties in internal publications is not permitted.

The Councillor Connect newsletter will not be distributed during the election period.

4. Public Consultation

All forms of public consultation during an election period will be limited to statutory processes such as:

- Applications under the *Planning and Environment Act 1987*
- Consultation required under Section 223 of the *Local Government Act 1989*.

Consultation on major strategy or policy issues, or that which invites submissions, will not occur, or if already commenced, will be discontinued during the election period.

5. Small Town Catch Ups / Community Information Sessions

Council will not schedule any 'Mayor and CEO Small Town Catchups' during the election period.

Where community information sessions are required and cannot be postponed, only officers will be in attendance.

6. Media

Council will not broadcast or participate in any regular television or radio program or publish its regular newspaper or e-newsletter updates during an election period.

The following exceptions may be applied by the CEO:

- advertising commissioned and approved by the appointed Election Returning Officer, for the purpose of informing electors about the election process
- for advertising of critical Council business, to the extent that it cannot be promoted prior to the commencement of the election period and which does not contain election material
- as required and approved by the CEO in response to an emergency.

All advertising, apart from that commissioned by the Election Returning Officer must be approved and certified by the CEO in accordance with *Publications during an Election Period Procedure*.

6.1 Media Interviews

Councillors will not participate in media interviews in their Council roles during an election period.

Councillors may participate in interviews as candidates and private citizens, but must take care to advise the media that they are speaking to them as an individual and not on behalf of the Council. This disclaimer must be made even when a councillor believes that it will not be broadcast as part of the interview or story.

Council officers may only participate in media interviews on operational matters and with the permission of the CEO. In the CEO's absence and where a response is required immediately, the Director - Corporate Services may authorise the spokesperson.

All media interviews are to be coordinated by the Marketing and Communications team.

7. Public Notices and Advertising

Regular advertising including tenders and public notices will be postponed where possible, during the election period.

The CEO may authorise the publishing of some public notices, giving consideration to the following conditions:

- Whether the notice is required by legislation.
- The matter cannot reasonably be deferred until after the election period.
- The advertisement does not contain any election material and is certified by the CEO prior to being published.

Advertising for the purpose of recruitment is permitted during the election period, however all advertisements must first be certified by the CEO.

8. Social Media

Councillors and Council officers will not engage in social media in their Council roles during an election period, except as approved by the CEO or Director Corporate Services. Councillors will not publish comments to official Council social media sites during an election period and Council officers will only publish comments which have been certified by the CEO in accordance with the *Publications during an Election Period Procedure*.

To the extent that it is technically possible to do so, all Council social media sites will be disabled for external comments, to prevent the publication of election material on those sites.

During the election period, Council officers are requested not to engage with any Councillors or Candidates via social media, including 'liking' or 'commenting' on posts.

9. Council Resources

Councillors will not use any Council resources for a purpose other than Council business during an election period. Council resources include, but are not confined to:

- Staff time
- Property (including meeting rooms and the Councillors' Suite)
- Equipment (including mobile phones, iPads, computers, printers, internet data and email accounts)
- Stationery (including Council nametags, business cards and photographs)

The use of Council resources is generally governed by the *Councillor Expenses and Entitlements Policy*. This Policy is varied during an election period as follows:

- Councillors will not attend conferences, functions or events as Councillors except when officially invited to do so as the representative of the Council
- Councillors will not undertake any professional development training as Councillors
- Councillors will reimburse the Council for all personal use of Council owned and provided mobile telephones, including any amount under the \$50 threshold for incidental personal use.

Councillors who wish to use email for election purposes must use a private email address.

10. Events and Speeches

Regular public events which are part of the normal operation of the Council will continue during an election period. Additional events, particularly events which would require Councillor involvement, will only be scheduled with the approval and at the sole discretion of the CEO. The scheduling of additional events that require the involvement of Councillors during an election period will be avoided where possible.

Councillors participating in Council events during an election period as representatives of the Council will not use the events for private electioneering. Material published or disseminated during an election period to promote a function or event will require certification by the CEO in accordance with the *Publications during an Election Period Procedure*.

Where a Councillor is required to deliver a speech at a function or event during an election period, Council officers are to prepare the speech and the CEO is to certify that it contains no election material before it is provided to the Councillor.

Functions or events for the purpose of electioneering will not be resourced or publicised by the Council.

11. Correspondence

Routine letters and emails that are part of normal Council business are not to be affected by election processes, however Council staff, equipment and stationery must not be used for election related Councillor correspondence. This includes, but is not restricted to:

- Letters with multiple addressees that are prepared by staff, printed on Council resources or issued on behalf of Council;
- Letters dealing with electoral matters for Councillors; and
- Letters and emails that do not form part of general correspondence and letters/bulk emails with more than 20 addressees. These are defined as publications and require certification.

12. Use of the Title "Councillor"

Councillors may use the title "Councillor" in their own election material, as they continue to hold their positions during the election period. To avoid any confusion however, Councillors must ensure that their election publications are clearly seen to be their own material and not to represent the Council. Councillors will not use the Council logo or any facsimile or derivation of the Council logo on their election material.

13. Dispute Resolution

Council will not undertake a dispute resolution procedure under the Councillor Code of Conduct during an election period.

Any dispute resolution procedures which had commenced, but were not yet resolved prior to the election period will be placed on hold. If re-elected, the Councillors involved may proceed with the dispute resolution once they have formally resumed their position as Councillors.

14. Equitable Distribution of Information

Where access to information has been requested by candidates during the election period, the matter will be referred to the Governance Department to determine whether or not it is appropriate to provide such information.

If approved, the information will be provided to the candidate and also maintained in a register which will be made available for inspection by any other candidate upon request.

Councillors will continue to receive information that is necessary to fulfil their existing elected roles. This information is not be subject to being recorded in the Candidate Information Register as outlined above.

15. Employee Conduct

Employees are discouraged from promoting any potential candidate during an election.

The CEO or any officer cannot be asked to undertake any tasks connected directly or indirectly with electioneering.

RELATED POLICIES AND PROCEDURES

- *Publications during an Election Period Procedure*
- *Councillor Expenses and Entitlements Policy*
- *Councillor Code of Conduct*

RELATED LEGISLATION

- *Local Government Act 1989*
- *Planning and Environment Act 1987*

REVIEW

This policy is to be reviewed by the Team Leader Governance within twelve months prior to a general election period. Should a by-election be required, the Team Leader Governance is to review this policy as soon as the need for a by-election has been identified.

Peter Harriot
CHIEF EXECUTIVE OFFICER

Date