

# Election Period Policy 2020

**Responsible Service Area: Governance**

**Adoption Date: 31 August 2020**

<b>Policy Title:</b> Election Period Policy		<b>Policy No:</b> 165	<b>Policy type:</b> Council Policy
<b>Policy creation date:</b> 31 August 2020	<b>Current version approved:</b> 31 August 2020	<b>Current version no.</b> 4	<b>Policy review date:</b> 31 August 2020
<b>Policy authority dates:</b> Adopted by Council: 31 August 2020	<b>Child policy/policies:</b> Nil	<b>Policy responsibility:</b> Governance Coordinator	<b>eCLIP record no.</b> 20/192276

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## 1. Introduction

- 1.1 In the lead up to an election the Victorian Local Government sector adopts an election period policy to avoid actions and decisions that may be interpreted as influencing voters or binding an incoming Council.
- 1.2 Specific provisions have been incorporated into the Local Government Act 2020 (the Act) that prohibit Council making major policy decisions or publishing or distributing electoral matter during the election period.
- 1.3 This policy forms part of the Governance Rules for Maroondah City Council.

## 2. Purpose

- 2.1 Maroondah City Council is committed to the principle of fair and democratic elections and therefore adopts and endorses the practices detailed within this policy in addition to legislative requirements.
- 2.2 The Election Period Policy has been developed in order to ensure that general elections for Maroondah City Council to be held on Saturday 24 October 2020 are conducted in a manner that is fair and equitable to all candidates and is publicly perceived as such.
- 2.3 It is an established democratic principle that elected bodies should not unnecessarily bind an incoming government during a caretaker period. The Council therefore commits to this principle in that it will make every endeavour to avoid making decisions that inappropriately bind the incoming Council.

## 3. Objective

To ensure:

- 3.1 compliance with the provisions of the Local Government Act 2020 dealing with the election period during the lead up to local government elections;
- 3.2 Council does not make inappropriate decisions or use resources inappropriately during the election period;
- 3.3 there are limits on public consultation and the scheduling of Council events; and
- 3.4 access to information held by Council is made equally available and accessible to candidates during the election.

## 4. Relationship to the Maroondah 2040 Community Vision

In relation to *Maroondah 2040: Our future together*, the operation of this policy is aligned with:

<b>Community Outcome:</b>	A well governed and empowered community
<b>Key Directions:</b>	8.1 Provide enhanced governance that is transparent, accessible, inclusive and accountable

## 5. Alignment with Council’s mission and values

This policy supports Council’s Mission and Values through ensuring the resilience of functions which support the provision of accessible and sustainable lifestyles for the community.

## 6. Definitions

Term	Meaning
Act	means the Local Government Act 2020
Candidate	refers to any person, including current Councillors, who has nominated as a candidate for an election under section 256 of the Act.
Council	means Maroondah City Council
Chief Executive Officer	includes an Acting Chief Executive Officer
Election Period s3(1)	means the period before an election day that: (a) starts at the time that nominations close on nomination day; and (b) ends at 6 p.m. on election day.
Electoral Material s3(1)	means an advertisement, handbill, pamphlet or notice that contains Electoral Matter, but does not include an advertisement in a newspaper that is only announcing the holding of a meeting.
Electoral Matter s3(1A)  s3(1B)	means ‘ <i>matter</i> ’ intended or likely to affect voting but not including any electoral material produced by or on behalf of the election manager for the purposes of conducting an election.  ‘ <i>Matter</i> ’ is to be taken to be intended or likely to affect voting if it contains an express or implicit reference to, or comment on: (a) the election; or (b) a candidate in the election; or (c) an issue submitted to, or otherwise before, voters in connection with the election
Significant Decision	means a Council decision which: (a) 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 (b) 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 (c) the Council considers could be reasonably deferred until the next Council is in place; or (d) the Council considers should not be made during an Election Period (as set out in this policy).

Council Decision	For the purposes of clause 3 of this policy, means: (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 employees (which includes the Chief Executive Officer) or a Community Asset Committee under delegation.
Prohibited Decision	as defined in section 69(2) of the Act
Special Council Meeting	means an unscheduled meeting of Council

## 7. Election Period

- 7.1 **The Election Period commences 12:01am, Tuesday 22 September 2020 and continues for a period of 32 days through until 6pm. Saturday 24 October 2020**
- 7.2 During the election period the Council will be deemed to be in ***'election period – caretaker mode'***.
- 7.3 **The Chief Executive Officer will ensure that all employees are informed of the requirements of this policy.**

## 8. Decision Making

### 8.1 Significant Decisions

This policy nominates significant decisions as decisions which Council considers should not generally be made. These are decisions which:

- (1) significantly affect the municipality; or
- (2) unreasonably bind the incoming Council.

To this end Council **will not hold a Council Meeting** during the Election Period, however, scope exists for Council to hold a **Special Council Meeting**, but only in the most urgent or extraordinary circumstances or for any statutory processes that may arise.

- (3) The Council, special committees and delegates must not make any Significant Decisions during the Election Period.
- (4) Council decisions which 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 are prohibited during the Election Period for a general election and a by-election.
- (5) Agendas for Special Council Meetings held during the Election Period must contain a certification by the Chief Executive Officer that no agenda item involves the making of a Significant Decision.
- (6) A Significant Decision which relates to the appointment or remuneration of the Chief Executive Officer; or commits Council to expenditure exceeded one per cent of its income

from general rates, municipal charges and service rates and charges in the preceding financial year, is invalid if it is made during the Election Period.

- (7) Any person who suffers any loss or damage as a result of acting in good faith based on a Significant Decision which is invalid under section 8.6 is entitled to compensation from Council for that loss or damage.

## 8.2 Prohibited Decisions

Prohibited decisions are specified in section 69(2) of the Act, and decisions made in contravention of this section during the election period are invalid.

Prohibited decisions include decisions under section 69(2)(d) of the Act - decisions which Council considers should not be made during the Election Period.

*Refer Appendix 1 - table illustration as to what constitutes Prohibited Decisions.*

## 9. Public Consultation

- 9.1 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.
- 9.2 Public consultations will cease to be initiated as from 1 July 2020 in the lead up to and during the Election Period.
- 9.3 An exemption to the requirements of Clause 9.2 (above) relate to statutory public consultation required under the *Planning and Environment Act 1987* or matters that continue to be subject to section 223 of the Local Government Act 1989, but only where the matter **could not be avoided** during the Election Period.
- 9.4 **Consultations under statutory provisions outlined in Clause 9.3 shall only proceed after express agreement by the relevant Director in consultation with the Chief Executive Officer and then if it relates solely to the normal day-to-day business of Council.**

## 10. Council Resources

- 10.1 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 this principle in that it will ensure Council resources are not used inappropriately during a Council election.**
- 10.2 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 relevant Director.
- 10.3 Council resources, including offices, support staff, hospitality services, equipment and stationery will be **used exclusively for normal Council business** during the Election Period, and shall not be used in connection with any electioneering activity.

- 10.4 Reimbursements of Councillors' out-of-pocket expenses during 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.
- 10.5 No Council events, logos, letterheads, or other Maroondah City Council branding should be used, or linked in any way, by a candidate for use in their election campaign.
- 10.6 The Chief Executive Officer or any staff should not be asked to undertake any tasks connected directly or indirectly with electioneering.
- 10.7 Photos, images or videos taken by, or provided by Council, **are not** to be used by any candidate for the purposes of electioneering or in support of their election campaign. This applies equally to:
- (a) Images and videos on Council websites or social media that may be able to be copied.  
*Refer also to clause 13.9*
  - (b) Posts and comments on social media that may be able to be forwarded and commented on.
- 10.8 No election material or active campaigning is to be conducted at Council sponsored events or be displayed in any Council building, or on Council infrastructure.
- 10.9 Budget allocations for Councillors seminars/training/conferences and Civic and Community events 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.
- 10.10 The Council will also ensure other Maroondah 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 feel they are/may be placed in a compromising situation by a request from a Councillor should politely **refer the Councillor to the Chief Executive Officer for clarification**.
    - (i) Requests from Councillors during the Election Period should be directed in the first instance to either the Chief Executive Officer and/or the appropriate Director.
- 10.11 Prior to the Election Period the **Chief Executive Officer** will ensure that all Council employees are advised regarding the application and scope of this policy and procedures.
- 10.12 Any Council employee who considers that a particular use of Council resources may influence voting in an election or provide an undue advantage for a candidate shall immediately advise their Director **before** authorising, using or allocating the resource.
- The Director **in consultation with the Chief Executive Officer** will decide if the use of Council resources is appropriate or not.
- 10.13 In applying these principles, Council understands that the following will be normal practice during Election Period:
- (a) Public Council events will not be organised during the election (caretaker) period;
  - (b) If totally unavoidable or unexpected, an event will **only be** conducted with the express permission of the **Chief Executive Officer**;

- (c) Speeches for Councillors will only be prepared by Council employees in relation to events that are part of the normal services or operation of the Council. Such speeches will not be circulated or available for publication;
  - (d) Media services, including media releases, will not be provided for Councillors during the caretaker period;
  - (e) Media releases will not mention or quote any Councillor(s) during the caretaker period;
  - (f) No Council newsletters will be printed or distributed by Council during the caretaker period;
  - (g) Neither the Council logo nor Council stationery will be used by candidates in any way that relates to the election; and
  - (h) Social Media – *refer clause 16*.
- 10.14 Equipment and facilities provided to Councillors for the purpose of conducting normal Council business **should not** be used for campaigning purposes.
- (a) Where it is impractical for Councillors to discontinue use of these during the Election Period, Councillors will keep a log of usage and reimburse the Council for expenses incurred.
  - (b) It is strongly suggested that Councillors 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 number on election literature.

## 11. Information

- 11.1 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 sitting 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.

*Refer to clause 11.3*

- 11.2 Information and or any briefing material prepared for Councillors during the Election Period will relate only to factual matters or to existing Council services to assist Councillors in conducting normal day-to-day activities.
- Such information will be sent/transmitted to Councillors only by the appropriate Director and or Chief Executive Officer.
- 11.3 An **Information Register** will be maintained by Governance commencing on the opening of nominations on Thursday 17 September 2020.

This Register will be a public document (available on Council's website) that records all requests for information of a non-election nature **by all candidates**, and the responses/documentation provided to those requests.

Details to be included within the Register include not only the request and response but also the name of the candidate making the request and the date request is made.



- 11.4 **Responses to candidate's requests (as per clause 11.3) will be provided by Directors or the Chief Executive Officer.** Directors will be required to discuss the request and the proposed response with the Chief Executive Officer prior to the response being provided. Only information that can be reasonably accessed will be released.
- 11.5 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.
- 11.6 Any **Freedom of Information (Fol) applications** lodged during the Election Period on matters regarding current Councillors will be dealt with where possible outside of the Election Period.
- Note: the Fol Act specifies a 42-day period in providing a response to an Fol application.*

## 12. Communication

- 12.1 Council communication **will not be used in any way** that might influence the outcome of a Council election.
- 12.2 During the Election Period, no employee will initiate any public statement that relates to an election issue. **Public statements are not only formal media releases but also verbal comments at meetings, functions and events where attending as part of their Council role.**
- 12.3 Any requests from Councillors for media advice or assistance during the Election Period will be channelled through the Chief Executive Officer.
- 12.4 In response to media enquiries the Chief Executive Officer, Directors or the Manager Communications & Engagement **will only** provide a response and such information should relate to current services and operations.
- 12.5 In the Election Period no media releases will be issued quoting or featuring any Councillor.
- 12.6 During the Election Period, Council initiated communications shall be restricted to the communication of normal Council activities.
- 12.7 No media advice or assistance will be provided to Councillors in relation to election campaign matters.
- 12.8 No publicity will be provided that involves specific Councillors.
- 12.9 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, images or videos created or provided by Council** for past Council activities.
- 12.10 Contact 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.

- 12.11 Publicity of Council events (if any during the Election Period) will be restricted to the communication of factual material and will not feature, mention, quote or contain any photo/video of any Councillor.
  
- 12.13 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.

## 13. Council Publications

13.1 Section 304 of the Act prohibits a Councillor or Council employee to use Council resources:

- (a) To print, publish or distribute; or
- (b) To cause, permit or authorise to be printed, published or distributed on behalf of, or purporting to be on behalf of Council;

any electoral material, unless the electoral material only contains information about the election process or is otherwise with, or under, any Act or regulation

Failing to comply with this section of the Act carries an offence of up to 60 penalty units.

13.2 **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.**

*Refer clause 13.16 - Procedure for certifying publications*

13.3 The Chief Executive Officer **must not certify** a publication that contains electoral matter.

13.4 The certification by the Chief Executive Officer must be in writing and cannot be delegated. Certification wording – over the Chief Executive Officers signature - should be as follows **“Certified by the Chief Executive Officer in accordance with Council’s Election Period Policy”**.

13.5 For the purposes of this Policy, Council publications include:

- (a) Council newsletters (either printed or electronic);
- (b) Advertisements and notices e.g.: job advertisements, public notices of contracts etc;
- (c) Media releases;
- (d) Leaflets and brochures;
- (e) Mailouts to multiple addresses; and
- (f) Mass email communications/newsletters from service areas such as Maroondah Leisure, Karralyka, BizMaroondah, Arts in Maroondah.

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

13.6 Material is **definitely electoral matter** if it:

- (a) Publicises the strength or weaknesses of a candidate;
- (b) Advocates the policies of the Council or of a candidate;
- (c) Responds to claims made by a candidate;
- (d) Publicises the achievements of the elected Council;
- (e) Publicises matters that have already been the subject of public debate;
- (f) Is about matters that are known to be contentious in the community and likely to be the subject of election debate;
- (g) Deals with Election Candidate statements; and
- (h) Refers to Councillors or candidates by name or by implicit reference.

- 13.7 The controls within the Policy **applies to all websites under the auspices of Council. i.e. new pages on the website or new material will require certification by the CEO.**
- 13.8 **Websites.** Council has a diverse range of websites that promote services, day-to-day activities, events and all manner of things Maroondah.
- (a) **Websites for the sake of this policy are divided into 2 categories**
- (i) **Council Matters**
- Maroondah City Council main website;
  - Your Say Maroondah;
  - BizMaroondah; and
  - Youth.
- (ii) **Operational**
- Maroondah Leisure; and
  - Karralyka.
- (b) All websites categorised under **Council Matters will require** certification by the Chief Executive Officer of any page change.
- 13.9 **All social media messaging on all Council auspiced platforms (e.g. Facebook, Twitter, Instagram, Linked In and YouTube) will require certification by the Chief Executive Officer.**  
*Refer clause 16 for further guidance.*
- 13.10 **In line with State and Australian governments, where possible Council should avoid all publication activity during the Election Period except where it is essential for the conduct of Council operations.**
- 13.11 A number of Council publications with references to either current Councillors or candidates, **both online and on public display will be withdrawn from view** during the Election Period.
- 13.12 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 e.g. *date of election*.
- 13.13 Profiles of current Mayor and Councillors will be removed from Council's websites during the Election Period but retain their contact details for their day-to-day role as Councillor i.e. names, photos and mobile numbers and email addresses **only**.
- 13.14 Any new material published on Council's website during the Election Period must be subject to the certification process - (refer clause 13.16). Council meeting agendas, minutes and the annual report are **considered exempt from such certification**.
- 13.15 Council pursuant to the provisions of the Local Government Act is required to produce an annual report, and the *Annual Report 2019-2020* will 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.

### 13.16 Procedure for certifying publications:

All publications are sent to the Manager Communications & Engagement (including job advertisements that are normally sent to Workplace People and Culture), who is responsible for:

- (a) checking that no election material is present unless it is factual election process information, and
- (b) maintaining the record of certification and certified documents.

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, Maroondah City Council - *Refer clause 10*

## 14. Assistance to Candidates

14.1 Council affirms that all candidates for the Council election will be treated equally.

For the purposes of this Policy any Councillor – whether standing for Council or not – will be regarded as a candidate

14.2 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.

14.3 All election related enquiries from candidates, including sitting Councillors, will be directed to the Returning Officer.

## 15. Caretaker Statement - Unscheduled Council Meeting Reports

15.1 As Council **will not** hold a Council Meeting during the Election Period, this section only applies to reports for a **Special Council Meeting**, if such a meeting is called.

15.2 In order to facilitate compliance with its commitment to ensuring appropriate decision-making during elections, Council adopts the following procedure, as outlined in clauses 15.3 & 15.4.

15.3 During the Election Period, the Chief Executive Officer will ensure a Caretaker Statement is included in every agenda submitted to the Council or to a delegated committee of Council for a decision.

15.4 The Caretaker Statement will appear at the start of the agenda and will state that:

*The recommended decisions in all reports on this agenda are not prohibited decisions as defined in clause 4 of the Election Period Policy.*

## 16. Social Media Activity - Election Period

Social media activity during the Election Period is to conform with the following:

- On all social media pages comments are to be **disabled**, and Caretaker Statement is to be pinned to sites where available
- YouTube videos to be set to **private**.
- Instagram pages are to be **disabled**.
- All social media activity to be kept to minimum, normal day-to-day activities only.
- No launches or announcements of any new projects, policy initiatives, or programs.
- 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 all social media sites.

Specific instructions relevant to each channel will be provided to all social media administrators by the Communications & Engagement team.

## 17. Administrative Amendments

- 17.1 From time to time, circumstance may require minor amendments be made to this Policy. Where this does not materially alter the Policy, such amendments may be made administratively by the Chief Executive Officer.
- 17.2 Any amendment which materially alters the Policy must be approved by resolution of Council.

## 18. Policy Distribution

A copy of this policy will be, as soon as possible after it is adopted by Council:

- provided to each councillor;
- available for inspection by the public at Council offices; and
- published on Council's website.

## 19. 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 2020 and associated regulations in relation to the Election Period.

## Appendix 1

### Table illustrating what constitutes a Prohibited Decision

Proposed Council Decision	Is it allowed?	Source
Employment or remuneration of a Chief Executive Officer under section 45, other than a decision to appoint an acting Chief Executive Officer.	No *	This is prohibited by s69(2)(a) of the Act
Committing the Council to expenditure exceeding 1% of Council's income from general rates, municipal charges and service rates and charges in the preceding financial year.	No *	This is prohibited by s69(2)(b) of the Act
A decision which Council considers could be reasonably deferred until the next Council is in place.	No	This is prohibited by s69(2)(c) of the Act
Significant decisions, being decisions that significantly affect the municipality or unreasonably bind the incoming Council, such as: <ul style="list-style-type: none"> <li>• decisions community grants,</li> <li>• direct funding to community organisations,</li> <li>• major planning and development decisions, and</li> <li>• changes to the strategic objectives or strategies in the Council Plan.</li> </ul>	Generally, No.	This is prohibited by s69(2)(d) of the Act
A decision that would enable the use of Council's resources in a way that is intended to influence, or is likely to influence, voting at an election.	No	This is prohibited by s69(3) of the Act

- \* In accordance with s69 of the Act, any person who suffers any loss or damage as a result of acting in good faith on a Council decision that is a matter under this proposed policy decision is entitled to compensation from the Council for that loss or damage.