

Election Period Policy

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*Unless replaced, this policy will still apply beyond the review date.

Related internal policies, procedures and guidelines	<ul style="list-style-type: none">• Good Governance Policy• Councillor Code of Conduct• Employee Code of Conduct
Related legislation	<ul style="list-style-type: none">• <i>Local Government Act 1989</i>

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Purpose

The Election Period Policy (**Policy**) has been developed in order to ensure that the general election for Nillumbik Shire Council on Saturday 24 October 2020 and subsequent elections are conducted in a manner that is ethical, fair and equitable, and are publicly perceived as such.

The Policy ensures that the ordinary business of Council continues throughout the election period in a responsible and transparent manner, in accordance with statutory requirements and established 'caretaker' conventions.

Scope

Council will function in accordance with this Policy during the election period commencing at midnight on Tuesday 22 September 2020 and concluding at 6:00pm on Saturday 24 October 2020.

The Policy addresses the legal requirements by providing guidance at an operational level to ensure compliance, and builds on the minimum statutory standards to enhance the transparency and accountability of Councillors and Council officers during the election period.

This Policy overrides any prior Council policy or document that refers to a 'caretaker' or election period.

Legislative Context

The *Local Government Act 1989 (the Act)* sets out the provisions regarding the responsibilities, functions and powers of Council in the period leading up to a general election.

Section 93B of the Act requires councils to adopt and maintain an Election Period Policy in relation to procedures to be applied by Council during the election period for a general election. The Policy is required to be maintained by reviewing and, if required, amending the Policy not later than 12 months before the commencement of each general election period.

In accordance with section 93B(4) of the Act, a copy of this Policy must be given to each Councillor as soon as practicable after it is adopted, and be made available for public inspection at Council offices and Council's website.

Policy

1. Council Decision Making

Matters of Council business requiring major policy decisions or significant decisions are scheduled to enable a Council resolution prior to the commencement of the election period, or deferred where appropriate, for determination of the incoming Council.

1.1 Major policy decisions

Section 93A of the Act prohibits a Council or Special Committee from making major policy decisions during the election period for a general election.

A major policy decision is defined in section 93A of the Act to mean any decision:

- (a) Relating to the employment or remuneration of a Chief Executive Officer (CEO), other than a decision to appoint an acting CEO;
- (b) To terminate the appointment of a CEO;
- (c) To enter into a contract the total value of which exceeds whichever is the greater of \$100,000 or 1% of the Council's revenue from rates and charges levied in the preceding financial year; and
- (d) To exercise any power under section 193 of the Act 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 in the preceding financial year.

***For the purposes of the 2020 election period, 1% of revenue from rates and charges of the adopted 2019/2020 Budget.**

If Council considers that there are extraordinary circumstances where the Nillumbik community would be significantly disadvantaged by Council not making a particular major policy decision, Council will, by resolution, request an exemption from the Minister for Local Government in accordance with section 93A(2) of the Act.

Unless an exemption has been granted, any major policy decision made during the election period is deemed to be invalid under the Act.

1.2 Significant decisions

In addition to major policy decisions as defined, other decisions may be contentious.

Council will avoid making decisions during an election period that are of a significant nature and that could unreasonably bind an incoming Council, unless the matter is urgent and cannot be deferred without having a negative impact on the Council, municipality or Nillumbik community.

2. Public consultation and Council events

In accordance with section 93B of the Act, limits must be placed on public consultation and the scheduling of Council events during the election period.

2.1 Public consultation

Public consultation is a process that involves an invitation to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy, and includes discussion of that matter with the public.

Public consultation should be avoided during the election period, unless required under the *Planning and Environment Act 1987*, or subject to section 223 of the *Local Government Act 1989*.

Some public consultation activities may be necessary during the election period to facilitate the day-to-day business of Council and ensure matters continue to be proactively managed. Any such public consultations will avoid express or implicit links to the election and must receive prior approval from the CEO.

In view of the potential for a matter to become contentious or politically sensitive in the course of the election period, Council reserves the right to postpone a matter if the issue is likely to affect voting at the election.

Where public consultation commences prior to the election period, the results of that consultation will not be reported until after the election period, unless approved by the CEO.

2.2 Council events

Council will not schedule any special events such as official openings or launches during the election period.

Annual, recurring shire-wide community events that are scheduled to take place during the election period will proceed, but there will be no formal role for Councillors at these events.

All other Council events will be scheduled to take place outside of the election period. Any publicity materials related to these events will be subject to the publication constraints outlined in Part 3 of the Policy.

Councillors may continue to attend external events and functions during the election period, however speeches, backgrounders and other Council resources will not be provided by Nillumbik Shire Council.

3. Council publications

3.1 Prohibition on publishing material

Section 55D of the Act prohibits Council from printing, publishing or distributing any advertisement, handbill, pamphlet or notice during an election period unless it has been certified, in writing, by the CEO.

In light of the major commitment of Council resources that is required during an election period to assess whether or not Council documents contain electoral matter, there will be restrictions placed on the number of Council documents published during the election period.

Only publications that the CEO deems to be essential to the day-to-day operations of Council during the election period will be assessed for compliance with section 55D of the Act, and submitted for certification by the CEO during that

period. These publications would include information to communicate a change or disruption to a Council service or an emergency which impacts on the health and wellbeing of community members.

All other documents must only be published either before or after the election period and not during that period. Council officers are to be given timely notification of the requirements of Part 3 of this Policy, and are required to schedule the publication of non-essential documents to a date outside of the election period.

3.2 Certification of publications

Publications to be printed, published or distributed during the election period must first be certified by the CEO that they do not contain electoral matter.

The certification by the CEO will be in writing on or affixed to a copy of the publication and be in the following form:

“Certified by the Chief Executive Officer in accordance with section 55D of the Local Government Act 1989.”

The power or duty to certify a publication will not be delegated by the CEO.

The CEO must not intentionally or recklessly certify a publication that contains electoral matter, unless that material is only about the election process.

Subject to the restrictions outlined in Part 3.1, publications which require certification include:

- Brochures, pamphlets, handbills, flyers, magazines, e-newsletters and books;
- Reports (other than agenda papers and minutes as outlined in Part 3.7);
- Advertisements and notices except newspaper notices of meetings;
- New website material;
- Social media posts (including Facebook and Twitter);
- Emails with multiple addressees, 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; and
- Any publication or distribution of Councillor speeches.

3.3 Prohibited material

Electoral matter as defined in the Act means any matter which intended or likely to affect voting in an election, but does not include:

- Any material produced by or on behalf of the Returning Officer for the purposes of conducting an election; or
- An advertisement in a newspaper announcing the holding of a meeting.

A publication is taken to contain electoral matter if it contains an express or implicit reference to, or comment on:

- The election; or
- A candidate in the election; or
- An issue submitted to, or otherwise before, the voters in connection with the election.

Electoral matter includes material which:

- 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.

3.4 Council publications containing Councillor information

Any reference to Councillors standing for re-election in Council publications printed, published or distributed during the election period must not include promotional text.

3.5 Council's website

Material published on Council's website in advance of the election 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 may be considered electoral matter, were it to be published during the election period.

Councillor contact information will remain available on the website during the election period, but Councillors' profiles will be removed.

No new material is to be published on Council's website during the election period unless it is considered to be essential to the operation of Council during that period. If deemed essential, the material must be certified by the CEO as outlined in Part 3.2 of this Policy.

3.6 Social media

Any publication on Council's corporate social media accounts including Facebook, Twitter, Instagram and the like during the election period must be certified by the CEO.

Consistent with Part 3.1 of this Policy, no material is to be posted on any of Council's social media accounts during the election period, unless it is considered essential to the day-to-day operations of Council during that period.

Council officers responsible for administering individual social media accounts will monitor their respective accounts during the election period and must use moderation features where available to ensure no electoral matter is posted on these accounts.

The restrictions imposed by this Part do not apply to the personal social media accounts of Councillors, provided that they do not use Council resources such as photographs taken by Nillumbik Shire Council.

3.7 Council and Committee business papers

Council will not schedule any Ordinary Council Meetings, Future Nillumbik Committee meetings or Advisory Committee meetings during the election period.

The agenda papers and minutes of any Special Council or Committee meetings which may need to be scheduled during the election period as a matter of urgency do not require certification by the CEO unless they are printed or published for a wider distribution than normal.

3.8 Annual Report

Council is required under sections 131 and 133 of the Act to produce and put on public display a copy of its Annual Report. The 2019-2020 Annual Report 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.

4. Council resources

Council resources, including offices, vehicles, staff, hospitality, services, property, equipment and stationery must be used exclusively for normal Council business during the election period and must not be used in connection with any election campaign or issue.

4.1 Role of officers

The Executive Assistant to the Mayor and Councillors, Governance staff, or any other officers, must not be asked to undertake any tasks connected directly or indirectly with the election campaign of a Councillor standing for re-election.

4.2 Use of Council equipment by Councillors

Councillors may continue to use any Council equipment provided to them to facilitate their performance of normal Council duties, subject to existing protocols and terms of use. Councillors standing for re-election must not use Council equipment (including mobile phones, tablets, laptops, computers or printers) as a resource to assist with election campaigns.

The allocated Mayoral motor vehicle must only be used for normal Mayoral activities during the election period and not to assist, or give the perception of assisting, an election campaign.

No Council logos, letterheads or other Nillumbik Shire Council branding will be used for, or linked in any way to, a candidate's election campaign.

4.3 Councillor reimbursement

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 support or are connected with an election campaign.

4.4 Ward-specific publications and activities

No Ward meetings are to be held during the election period. Ward-specific publications or Councillor profiles and articles in the media, will not be arranged or published by Council during the election period.

4.5 Officer discretion

Council will ensure that due propriety is observed in the use of all Council resources. Officers are required to exercise appropriate discretion in that regard. Where the use of Council resources appears to relate to the election campaign of a Councillor standing for re-election, the matter must be referred to the CEO or his or her delegate.

5. Media and publicity

5.1 Restriction on services

Council's Communications and Engagement team undertakes the promotion of Council activities and initiatives.

During the election period, this team's services must not be used in any way that might promote a Councillor as an election candidate.

Council publicity during the election period will be restricted to communicating essential information and subject to certification by the CEO.

5.2 Media releases / Spokespersons

Media releases will minimise references to specific Councillors and will not identify any Councillor in a manner that could promote a Councillor as an election candidate. Where it is necessary to identify a spokesperson, the CEO or his or her delegate will be consulted.

Media releases will require certification by the CEO.

5.3 Councillors

Councillors will not use their position as an elected representative or their access to Council officers and other Council resources to gain media attention in support of an election campaign.

5.4 Council officers

During the election period, no Council officer may make any public statement that relates to an election issue unless prior approval has been obtained by the CEO or his or her delegate.

6. Information

6.1 Candidate information

All election candidates have equal rights to information relevant to their election campaigns from the Council administration. While it is important that sitting Councillors continue to receive information that is necessary to fulfil their existing elected roles, neither Councillors nor candidates will receive information or advice (including any internal Council publications) from Council officers that may improperly advantage candidates in the election.

In conjunction with external organisations such as Victorian Electoral Commission, Municipal Association of Victoria, and Victorian Local Governance Association, where appropriate, Council officers will assist with the facilitation of candidate information sessions for election candidates or potential election candidates.

6.2 Election Campaign Return

Further to section 62 of the Act, candidates will be advised of the requirements to complete and submit an Election Campaign Return to the CEO within 40 days after the election day. The Return must contain details of any campaign donation or gift valued at, or greater than \$500, received during the 'donation period', which is the period between 30 days after the previous general election and 30 days after the current general election.

6.3 Information Request Register

The Governance Unit will maintain an Information Request Register during the election period. This Register will be a public document that records all requests relating to electoral matters and non-routine requests for information by Councillors and candidates, and the responses given to those requests.

6.4 Role of Returning Officer

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, to the CEO or his or her delegate.

Review Timelines

In accordance with section 93B (2b) of the Act, Council will 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 general election period.