



Council Policy

Election Period Policy For 2016 General Elections

Adopted by Council at its meeting held on March 2016

Council Policy

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Attachments

- Form 1 Request for Chief Executive Officer to certify material
- Form 2. Chief Executive Officer certification
- Form 3 Election Period Certification Procedure

Appendices

- Appendix 1 Council publications and resources during the Election Period
- Appendix 2 Section 76D of the Local Government Act 1989 – Misuse of Position
- Section 76E of the Local Government Act 1989 – Improper Direction and Improper Influence
- Section 93A of the Local Government Act 1989 – Conduct of Council during Election Period
- Section 93B of the Local Government Act 1989 – Council to adopt an Election Period policy

Council Policy

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1. Policy intent

The *Local Government Act 1989* (“the Act”) provides that during the ‘election period’ as defined in Section 3 of the Act, certain prohibitions apply to the functions and powers of a Council as it enters into a “caretaker” period, while ensuring that the normal business of government continues and Council meets its responsibilities to the community.

The intent of this policy is to clearly articulate how the business of Council will function during the legislated Election Period commencing on the last day of nominations and continues until 6.00pm on the Election Day, a period of 32 days. For the purpose of this policy the mandatory election period will be from midnight on 20 September until 6.00pm on 23 October 2016 (Election Day).

2. Purpose/Objective

The purpose of this Election Period Policy is to address the requirements of the Act regarding the responsibilities, actions and behaviours of the Council in the period leading up to a general elections.

The objective of the policy is to ensure that the ordinary business of local government in the City of Bayside continues throughout the election period in a responsible and transparent manner, and in accordance with the legislated requirements.

This policy prescribes actions and procedures the organisation will implement in observance of statutory requirements and established election period conventions in the interests of ensuring a fair election generally during the election period. This policy builds on the minimum statutory standards to enhance the accountability of the Council, Councillors and Council staff during the election period.

Section 93A of *the Local Government Act 1989* – Conduct of Council, sets out the requirements of Council behaviour during an ‘election period’ (refer to Appendix 2).

3. Scope

The scope of this policy applies to Councillors and Council staff during the Election period to:

- Prevent inappropriate decisions and misuse of resources;
- Limit public consultation and council events; and
- Provide equitable access to council information
- Prohibition on Council (making major policy decisions)

The Election Period Policy has been developed in order to ensure that the general elections for the Bayside City Council on Saturday 22 October 2016 and any subsequent elections are conducted in a manner that is ethical, fair and equitable and is publicly perceived as such.

4. “Election” Period

The election period is defined within Section 3 of the *Local Government Act 1989* and commences on the last day on which nominations for an election can be received and ends at 6.00pm on Election Day. For the purpose of this policy the period is from 20 September 2016 at midnight to 22 October 2016 at 6.00pm.

5. Roles and Responsibilities

5.1. Responsibility of Councillors

Councillors need to be mindful of their responsibilities in relation to improper use of position as outlined in the Act. Sections 76D and 76E of the Act prohibit Councillors from misusing or inappropriately making use of their position. A breach of section 76D attracts serious penalties including possible imprisonment. Section 76D in relation to the election period ensures a fair election is held where council resources are not used for campaigning by sitting Councillors to increase advantage over other candidates or to influence voters. Refer to Appendix 1 for an extract of Section 76D and E of *the Local Government Act 1989*.

5.2. Role of the Chief Executive Officer (CEO)

The Chief Executive Officer or his delegate will ensure, that all Councillors receive a copy of the Council adopted policy as soon as practicable, after the Council adoption of the policy, and staff are informed of the application of this policy at least 30 days prior to the commencement of the election period. The Chief Executive Officer will issue guidelines to staff on their responsibilities in respect to the implementation of this Policy.

6. Policy Decisions during the Election Period

There are three levels of decision making that are impacted during the election period:

1. Major Policy Decisions (governed by section 93A of the Act)
2. Inappropriate Decisions (governed by Section 93B of the Act)
3. Significant Decisions (governed by the Policy, which goes beyond the minimum statutory requirements.

The Chief Executive Officer or his delegate will ensure as a far as possible, that matters of Council business requiring major policy or significant decisions are scheduled for Council to enable resolution prior to the commencement of the Election Period, or deferred where appropriate for determination by the incoming Council.

6.1. Major Policy Decisions

Section 93A of the *Local Government Act 1989* prohibits the making of “Major Policy Decisions” during the election period, which is from Entitlement Day until 6.00pm on the Election Day.

As defined in the Act major policy decisions are any decisions that:

- relate to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
- to terminate the appointment of a Chief Executive Officer under section 94;
- to enter into a contract the total value of which exceeds whichever is the greater of \$100,000 of such higher amount as may be fixed by Order in Council under section 186(1) of *the Local Government Act 1989*; or 1% of the Council’s revenue from rates and charges levied in the preceding financial year. (**For Bayside this equates to \$789,000.**);
- 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 of *the Local Government Act 1989* in the preceding financial year. (**For Bayside this equates to \$789,000.**);

A major policy decision made in contravention of this section is invalid.

If the Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.

6.2 Inappropriate Decisions

Where a decision does not meet the criteria for a major policy decision, it must still be avoided if it meets the definition of an inappropriate decision under Section 93B(5) of *The Act*.

If a decision would affect voting in an election, and/or could reasonably be made after the elections, it is considered an inappropriate decision under the Act and must therefore be scheduled before or after the election.

An inappropriate decision includes a decision that would affect voting at an election or decisions that may unreasonably bind an incoming Council and could reasonable be deferred until after the election, such as:

- Allocating community grants or other forms of direct funding for community organisations;
- Major Planning Scheme amendments

6.3 Significant Decisions

In the case of a decision that significantly affects the municipality or binds the incoming Council, which is not expressly prohibited under Section 93A of *The Act* or meets the definition of an inappropriate decision under Section 93B(5) of *The Act*, a number of factors will need to be considered including:

- Whether the decision is 'significant';
- The urgency of the issue (can it wait until after the elections);
- The possibility of financial and/or legal repercussion if it is deferred'
- Whether the decision is likely to be controversial; and
- The best interest of Council.

Significant decisions include the following:

- Major planning scheme amendments; and
- Changes to the strategic objectives or strategies in the Council Plan.

7. Public Consultation during the election period

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

Public consultation may be undertaken during the Election Period to facilitate the day to day business of Council, to ensure matters continue to be proactively managed. Consultations will avoid express or implicit links to the election. In view of the potential for a matter or issue 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. Council will not continue or commence consultation on any contentious or politically sensitive matter after the date on which nominations close.

The above does not apply to public consultation required pursuant to the *Planning and Environment Act 1987* or to matters subject to Section 223 of *The Act*. Consultation under this statutory provision shall only proceed after express agreement by the relevant Director where it relates solely to the normal day-to-day business of Council, and the consultation is not deemed to be controversial.

All public consultation that is likely to run into the election period must have prior approval from the Chief Executive Officer. Where approved, the results of the consultation will not be reported to Council until after the election period, unless the Chief Executive Officer or nominated delegate decides otherwise.

8. Council events

Councillors are able to continue to attend meetings, events and functions during the Election Period which are relevant to the Council and the community. However they will have no role to play at these events.

Council's annual program of events will continue during the Election Period. However, any publicity must be mindful of the controls on electoral material outlined in this policy.

8.1 Other Organisation Events

Councillors are able to attend events or functions conducted by external bodies during the Election Period, however when attending as a representative of Council, Councillors must be mindful that they do not use that opportunity to promote their election campaign.

9. Council Publications during the election period

In accordance with Section 55D of the Local Government Act 1989 Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing by the Chief Executive Officer or nominated delegate.

A publication that contains an express or implicit reference to any of the following is taken to be electoral matter:

- the election;
- a candidate in the election (with the exception of Council minutes and agendas);
- an issue submitted to, or otherwise before, the voters in connection with the election;
- 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; or,
- or publicises the achievements of the elected Council.

Best practice is for Council to avoid all publications activity during the election period except where essential for the conduct of Council operations. Where printing, publishing or distributing a document is deemed essential to Council business during the election period, CEO certification is required for all publications. Publications should be read broadly to include electronic information and web based productions.

10. Certification Process

The process for the certification will be as follows:

- When drafting a publication, check and ensure that no election material is present - if uncertain check with the Governance Department.
- All draft publications are to be sent or produced by Communications Department (excluding Job advertisements). They will forward any document for clarification or if material is doubtful to the Governance Department for determination.
- Once the draft is prepared and checked, the document is to be given to the CEO with the wording as per Form 1 attached to this policy.
- The Chief Executive Officer will use the wording in Form 2 attached to this policy to certify the document.

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 or the City of Bayside (eg: by use of Council logo).

The controls do not cover newspaper advertisements which simply announce the holding of a meeting or the election process itself.

An Election Period Certification Procedure is attached to this policy and referred to as Form 3.

11. Publications

Any Council publication which is potentially affected by this policy will be reviewed by the Governance Department to ensure that any circulated, displayed or otherwise publicly available collateral during the election period does not contain material that may be construed as “electoral matter”.

Council will review all its public collateral available from the Corporate Centre, branch libraries and Maternal Child Health Centres and remove any which might contain electoral matter prior to the election period.

Any reference to Councillors in Council publications printed, published or distributed during the election period must not include promotional text or express personal views and opinions.

A summary of Council publications and resources during the election period is attached to this policy.

12. Let's Talk Bayside

Council will cease publication of Let's Talk Bayside and any similar publication during the election period.

13. Website

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. Information about Councillors will be restricted to the names of the elected representatives and contact details and committee or other bodies Councillors have been appointed to by the Council.

Council agendas and minutes of meetings do not require certification if published in the usual way on the website.

14. Social Media

Council has a number of social media sites including Twitter, Facebook and YouTube. Council's Communication and Customer Service Department will continue to monitor Bayside City Council corporate facebook sites and twitter feeds.

During the Election Period, Bayside City Council will not be active on the various social media sites such as YouTube, Facebook or Twitter. A post will be provided indicating that these sites are not active during the Election Period. However, any changes to service provision will be posted.

During the Election Period, no new imagery or text of Councillors and their activities will be posted.

The ability for members of the public to post comments on Council's social media sites will not continue during the Election Period.

The Council officer responsible for administering Council's social media sites will monitor these sites during the Election Period and moderate where required, to ensure that no electoral matter is posted on these sites or make reference to candidates or the 2016 election.

15. Annual Report

Council is required by the Act to produce and put on display a copy of its Annual Report. The 2015/16 Annual Report 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. This publication is not considered an 'advertisement, handbill, pamphlet or notice' and does not require certification.

The annual report must not include material that is electioneering or that publicises the attributes or achievements of individual Councillors.

16. Photo boards

Public photo boards containing photographs of current Councillors on display at Council premises will be removed during the election period. Councillors must not use existing Council photographs as part of their election material.

17. Publicity

It is recognised that Council publicity is intended to promote Council activities and services. Council publicity will not be used in any way that might influence the outcome of a Council election.

During the Election Period, no Council employee may make any public statement that could be construed as influencing the election, or make political statements during the Election Period. This does not include statements of clarification that are approved by the Chief Executive Officer or nominated delegate.

During the Election Period, publicity campaigns, other than for the purpose of conducting the election, will be avoided wherever possible. Where a publicity campaign is deemed necessary for a Council service or function, it must be approved by the Chief Executive Officer or nominated delegate. In any event Council publicity during the Election Period will be restricted to promoting normal Council activities, and no Council funded publicity will feature Councillors excluding the Mayor when representing Council in an official capacity.

18. Media Advice

Any requests for media advice or assistance from Councillors during the Election Period will be channelled through the Chief Executive Officer, or the Chief Executive's designated delegate. In any event, no media advice or assistance will be provided in relation to election campaign matters, or in regard to publicity that involves Councillors.

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

19. Media releases /spokesperson

Media releases will not refer to a Councillor or Councillors. Where it is necessary to identify a spokesperson in relation to an issue, the Chief Executive Officer will determine the appropriate person.

20. Speeches

Any publication or distribution of a Councillor or Mayoral speeches by the Council must be subject to the certification process. Council staff must be mindful when preparing speeches and should ensure that speeches contain a short welcome, and should not contain any express or implied reference to the election.



21. Title of Councillor

Councillors may use the title “Councillor” in their election material, as they continue to hold that position during the election period. To avoid confusion, Councillors should be advised to ensure that any election publication using the title “Councillors” clearly indicates that it is their own material and does not represent Council.

22. Council Resources

In accordance with Section 55D of the Act the Council will ensure that due probity is observed in the use of all Council resources during the Election Period, and Council staff are required to exercise appropriate discretion in that regard.

Council resources, (including offices, meeting rooms, support staff, hospitality services, equipment electronic devises, ipad, mobile phones, stationery and mayoral vehicle) must not be used in connection with any election campaign during the Election Period.

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 Chief Executive Officer or the Chief Executive Officer’s delegate.

Reimbursements of Councillor’s 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.

No member of Council staff, including the Executive Assistant to the Mayor will be asked to undertake any tasks connected directly or indirectly with the election campaign of a Councillor standing for re-election.

No Council logos, publications, letterheads, or other Bayside City Council branding will be used for, or linked in any way to, a candidate’s election campaign.

Officers are unable to assist in preparing Councillor election material or using their media contacts.

Councillors must ensure that they comply with the requirements of the Act in respect to election material and the necessary registration and endorsements from the Returning Officer.

Mobile phone costs associated with electioneering will not be paid by Council. Councillors standing as candidates must ensure that the Council provided mobile phone is not used for electioneering purposes.

23 Public Question Time at Ordinary Meetings of Council

In accordance with clause 63 of Council's Governance Local Law No.1 any questions to the Council from the public relating to electoral matter during an election period will not be considered at any Council meeting.

24. Election Period Statement – Reports to Ordinary Meetings of Council, Special Meetings of Council and Planning and Amenity Committee.

Given Council will continue to hold an Ordinary Meeting of Council, Planning and Amenity Committee meeting and a Special Meeting of Council during the Election Period, and in order to facilitate compliance with its commitment to ensuring appropriate decision-making during the Election Period, Council adopts the following procedure.

Procedure

- During the Election Period, the Chief Executive Officer will ensure that an Election Period Statement is included in every report submitted to a meeting of Council or Committee (if required) for a decision.
- The statement will specify one of the following:
 - a) The recommended decision is not a "Major Policy Decision" as defined in section 93A of the Local Government Act 1989 or a "Significant Decision" within the meaning of this policy.
 - b) The recommended decision is not a "Major Policy Decision" within the context of the Local Government Act 1989. The recommended decision is a "Significant Decision" within the meaning of this policy, but an exception should be made for the following reasons (insert reasons for making an exemption).
 - c) The recommended decision is to seek an exemption from the Minister because the matter requires a "Major Policy Decision" within the meaning of section 93A of the Local Government Act 1989.
 - d) The recommended decision is a "Major Policy Decision" as defined in section 93A of the Local Government Act 1989, but an extraordinary circumstances was granted by the Minister for Local Government on (insert date).

During the Election Period, the Council will not make a decision on any matter or report that does not include one of these Election Period Statements.



25. Information

The Council recognises that all election candidates have certain 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 staff 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 Period.

Information and briefing material prepared by staff or the Contractor conducting the elections on behalf of Council, during the Election Period will relate only to factual matters or to existing Council services. Such information will not relate to policy development, new projects or matters that are the subject of public or election debate or that might be perceived to be connected with a candidate's election campaign.

All election process related enquires from candidates, whether sitting Councillors or not, will be directed to the Returning Officer or where the matter is outside the responsibility of the Returning Officer, to the Chief Executive Officer or nominated delegate.

26. Information Register

An Information Request Register will be maintained by the Governance Department during the Election Period. This Register will be a public document that records all requests for information by Councillors and Candidates, and the responses given to those requests.

Section 76B of the Act prescribes serious penalties for any Councillors who inappropriately makes use of their position or information obtained in the role of Councillor, to gain an advantage.

27. Equal accessibility to information for Candidates

The Council affirms that all candidates for the Council election will be treated equally. To ensure all candidates have equal access to information held by Council during the election, where a request for information is granted by the Chief Executive Officer as recorded in the Information Request Register it will be made publicly available on Council's website for all candidates to access on a separate web page headed Candidates Information

28. Authority

The Chief Executive Officer or his delegate will be responsible for the enforcement of this policy.

29 Monitoring, evaluation & review

Non-compliance with this policy will breach the provisions of the Local Government Act 1989.

30. Related documents

Acts	Local Government Act 1989
Strategies	
Procedures	
Guidelines	Local Government Victoria – A guide for Councils – Reforms arising from the Local Government Amendment (Improved Governance) Act 2015

31. Definitions & Abbreviations

Term	Meaning
Election Period	In relation to an election, means the period that - starts on the last day on which nominations for that election can be received; and ends at 6 p.m. on election day.
Election	The term election covers both general and by-elections
The Act	This refers to the <i>Local Government Act 1989</i> .
Electoral matter	Is broadly defined as any matter which is <i>“intended or likely to affect voting in an election”</i>
Publishing	Means to publish by any means, including publishing on the Internet.
Electoral advertisement, handbill, pamphlet or notice	Means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting;
Major Policy Decision	Means any decision relating to the following: a) the employment of remuneration of a Chief Executive Officer under section 94 other than a decision to appoint an acting Chief Executive Officer; b) to terminate the appointment of a Chief Executive Officer; c) to enter into a contract the total value of which exceeds whichever is the greater of \$100,000 or such higher amount as may be fixed by Order in Council under section 186(1) of the Local Government Act 1989 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 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 of the Local Government Act 1989 in the preceding financial year.
Minister	Refers to the Minister for Local Government
Printed electoral material	Means an advertisement, handbill, pamphlet or notice that contains electoral matter and includes social media.
Publication	Means a written document in hard copy or electronic copy.

Election period Certification Procedure

Operation

This procedure applies during the Election Period (ie from midnight at the end of Tuesday 20 September 2016 until 6.00pm on Saturday 22 October 2016). This procedure is to be used for certifying any publication pursuant to Section 55D of the Local Government Act 1989.

Background

All requests for advertisements or publications during the Election Period must be certified by the Chief Executive Officer, to confirm that they do not contain election material, prior to being printed or published or distributed.

Definitions:

“Publication” means any advertisement, pamphlet, handbill, press release notice or similar.

Process

1. **All publications during the Election Period must** be forwarded to the Governance Department, so that arrangements for certification can be made.

If there is any doubt about whether the material is subject to the procedure, it should be forwarded to Governance for clarification.

The Governance Department together with the Executive Manager Communications and Customer Services will read the proposed publication and check that no election material is present (unless it is factual election process information).

2. Once the publication has been checked, complete FORM 1 and certification page to the front of the publication. Completion of FORM 1 indicates the publications is ready for certification by the CEO.

Forward the publication together with attached certification page to the Chief Executive Office to arrange for the standard certification to be used by the Chief Executive Officer for certification purposes. Refer to wording as specified on FORM 2.

3. Once certification by the CEO has been provided, the publication author will be advised and receive a copy of the certification. The publication will not be returned.

The original document together with the certification application will be placed in a folder for record keeping.

Council publications and resources during the election period.

	Publications	Resources
	Council advertisements, handbills, pamphlets and notices must be certified by the CEO during an election period. Penalties apply to the certification, printing, publishing or distribution of such documents containing electoral matter.	Council should ensure that Council resources including staff are not used for electoral campaigning purposed during elections. In some cases misuse of Council resources may be a criminal offence that can be prosecuted in court.
Annual Report	<p>The Annual Report is required by legislation and would not normally be considered an “advertisement, handbill, pamphlet or notice”. It should not require certification.</p> <p>However, the annual report must not include material that is electioneering or that publicises the attributes or achievements of individual Councillors.</p> <p>In addition, if Council will be printing or distributing a greater number of copies of the annual report than usual, it may be regarded as a pamphlet and should be subject to certification by the CEO.</p>	<p>Section 131(6) of the Local Government Act 1989 requires Council to normally submit its Annual Report to the Minister no later than 30 September each year.</p> <p>This is a proper use of Council resources.</p>
Annual Report summary	Any publication of an extract or summary of the Annual Report is likely to be regarded as a pamphlet and must be subject to the certification process.	Council resources should not be used to produce or distribute any summary of an Annual Report during the election that would be regarded as electoral material.
Council and committee Meetings	<p>Agenda papers and minutes of meetings are not considered advertisements, handbill, pamphlets or notices and should not require certification.</p> <p>However, if Council meeting papers are printed or published for a wider distribution than normal, they should be treated as pamphlets and be subject to the certification process.</p> <p>Public Question raised at Ordinary Meetings of Council must not relate to any electoral matter.</p>	The conduct of Council meetings as well as the preparation of agenda papers and minutes, is part of normal Council business. It is expected that they would continue to be resourced by the Council administration during an election period.

<p>Advertisements and Notices</p>	<p>All Council advertisements and notices must be subject to the certification process during an election period. This excludes job advertisements and various notices, such as Council meetings, and road closures.</p> <p>Newspaper notices of meetings are not regarded as electoral matter under section 3(1) of the Local Government Act 1989 and can be certified</p>	
<p>Web site – new material</p>	<p>Any new material published on the Council's web site during the election period that may be considered an advertisement, handbill, pamphlet or notice must be subject to the certification process.</p> <p>As noted above, Council agendas and minutes of meetings and full annual reports do not require certification if published in the usual way.</p>	<p>Council's web site should not be used to convey information that could be regarded as electoral material unless it is only about the election process.</p>
<p>Web site existing material</p>	<p>It is not necessary to certify material that was published on the Council's web site well before the election period.</p> <p>However it is recommended that web sites be checked at the start of the election period:</p> <ul style="list-style-type: none"> • Profiles of Councillors who are candidates should be removed from the web site, but not contact details. • Information prominently displayed on the web site that might be regarded as likely to influence how people vote should be removed. 	<p>Council's web site should not be used to convey information that could be regarded as electoral material unless it is only about the election process.</p>
<p>Social media</p>	<p>Any publication on social media sites which are auspiced by Council, will cease during the Election Period.</p> <p>Similar requirements apply to Council blog sites.</p> <p>A process is in place to ensure any posting from the organisation to social media is certified where it relates to a change in service provision.</p>	<p>Council auspiced social media must not be used for election campaigning.</p> <p>Council will limit access to their social media sites during election period and undertake constant monitoring to ensure no electoral matter is posted.</p>



Email	<p>Emails that are part of the normal conduct of Council business should not require certification.</p> <p>However, any emails with multiple addresses, used for broad communication with the community, should be subject to the certification process</p>	<p>Council email services must not be used for electioneering purposes.</p> <p>If necessary, Councillors should be referred to one or more of the free email providers for private email addresses.</p>
Correspondence	<p>Mass mail outs or identical letters send to a large number of people by or on behalf of Council must be subject to the certification process.</p>	<p>Council staff should not prepare Councillors' private mail or electoral correspondence and such material must not be printed on Council stationary or using Council equipment.</p>
Mobile phones		<p>Mobile phone costs associated with electioneering should not be paid by Council.</p> <p>If Councillors are provided with a Council owned mobile phone, suitable procedures should be put in place. This may involve:</p> <ul style="list-style-type: none"> • Requiring Councillors to use another mobile phone for electioneering ; and • Monitoring usage and ensure reimbursement by Councillors of for personal use is maintained.
Council offices and libraries	<p>Existing documents available to the public at Council offices and libraries do not normally require CEO certification.</p> <p>However, any increase in the availability of a publication should be subject to certification.</p> <p>It is also recommended that staff check material in libraries and offices to make sure that publications including electoral matter are not prominently displayed.</p>	<p>Electoral material, including pamphlets, posters and notes should not be visible or available at any Council premises during an election.</p> <p>The only exception of this is a material issued by the Returning Officer for the purpose of conducting the election.</p>

Media releases	Media releases should be regarded as documents that require certification by the CEO.	Council staff must not prepare or assist in the preparation of media releases that contain electoral material. Councillors should be advised that media releases dealing with their election campaign should only be issued privately.
Events	Material printed or disseminated during the election period to publicise a function or event must be subject to the certification process.	Functions or events for the purpose of electioneering must not be resourced or publicised by the Council. Normal Council events are not prohibited in the election period. However, it is recommended that they be kept to a minimum. Where events do occur, Councillors should be advised that they are representing the Council and should not use the opportunity for electioneering.
Speeches	Any publication or distribution of Councillors' speeches by the Council must be subject to the certification process.	Council staff and resources should not be used to prepare or publish speeches that contain electoral matter.
Title of "Councillor"		Councillors may use the title "Councillor" in their election material, as they continue to hold their positions in the period. To avoid confusion, Councillors should ensure that any election publication using the title "Councillor" clearly indicates that it is their own material and does not represent Council.
Returning Officer	The election returning officer is a statutory position and does not perform his or her duties on behalf of the Council. Therefore, publications by a VEC Returning Officer do not need certification.	



Extract of Section 76D of the Local Government Act 1989.

Misuse of Position

Section 76D of the Local Government Act 1989 prohibits Councillors from misusing their position. All councillors during the election period are required to be familiar with the content of section 76D of the Act:

- (1) A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position—
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the Council or another person.Penalty: 600 penalty units or imprisonment for 5 years or both.
- (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—
 - (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of section 77(2); or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
 - (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
 - (e) using public funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under this Division.
- (3) This section—
 - (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
 - (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

Extract of Section 76E of the Local Government Act 1989.

Improper direction and improper influence

- (2) A Councillor must not direct, or seek to direct, a member of Council staff—
- (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or
 - (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
 - (d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.

Penalty: 120 penalty units.

Extract of Section 93A of the Local Government Act 1989.

Conduct of Council during election period

- (1) Subject to this section, a Council, a special Committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.
- (2) If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.
- (3) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.
- (4) A major policy decision made in contravention of this section is invalid.
- (5) Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.
- (6) In this section, a **major policy decision** means any decision—
 - (a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
 - (b) to terminate the appointment of a Chief Executive Officer under section 94;
 - (c) to enter into a contract the total value of which exceeds whichever is the greater of—
 - (i) \$100 000 or such higher amount as may be fixed by Order in Council under section 186(1); or
 - (ii) 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year;
 - (d) 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.

Extract of Section 93B of the Local Government Act 1989.

Council to adopt an election period policy

- (1) A Council must prepare, adopt and maintain an election period policy in relation to procedures to be applied by Council during the election period for a general election.
- (2) A Council must prepare and adopt an election period policy as required by subsection (1)—
 - (a) by 31 March 2016; and
 - (b) following the general election on 22 October 2016, 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 subsequent general election period.
- (3) An election period policy must include the following—
 - (a) procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the election period before a general election;
 - (b) limits on public consultation and the scheduling of Council events;
 - (c) procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.
- (4) A copy of the election period policy must—
 - (a) be given to each Councillor as soon as practicable after it is adopted; and
 - (b) be available for inspection by the public at the Council office and any district offices; and
 - (c) be published on the Council's Internet website maintained under section 82A.
- (5) In this section—

inappropriate decisions made by a Council during an election period includes any of the following—
 - (a) decisions that would affect voting in an election;
 - (b) decisions that could reasonably be made after the election.