

Election (Caretaker) Period Policy

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Directorate:	Customer Care and Advocacy
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1. Introduction

The Local Government Act 1989 ('the Act') provides that during the 'election period' certain prohibitions apply to the general functions and powers of Council. It is during this time that Council enters the caretaker period.

The 'election period' is defined by the Act as starting on the last day for nominations and ending at 6pm on the Election Day. The last day for nominations is the day that is 32 days before the Election Day.

The election period or caretaker period for the 2020 local government elections will commence at midnight on Tuesday 22 September 2020 and end 6.00pm on Saturday 24 October 2020.

This policy replaces and overrides any previous policy or document that refers to the caretaker period.

2. Purpose

The Election (Caretaker) Period Policy (Policy) has been developed in order to ensure that the general elections for the Moorabool 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.

In 2020, Moorabool Shire will be utilising postal voting which closes at 6.00pm Friday, 23 October 2020).

The Policy will also facilitate the continuation of the ordinary business of local government in the Moorabool Shire throughout the caretaker period in a responsible and transparent manner, in accordance with statutory requirements and established 'caretaker' conventions.

This Policy also commits Council during the caretaker period to:

- avoid making significant new policies or decisions that could unreasonably bind a future Council; and
- ensure that public resources, including staff resources, are not used in election campaigning or in a way that may improperly influence the result of an election, or improperly advantage existing Councillors as candidates in the election.

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3. Definitions

Where terms used in this Policy are defined in the Act, their use in this Policy is consistent with the definitions in the Act.

Definitions used in this Policy which are not defined by the Act are:

Caretaker period	Has the same meaning as 'election period' in section 3(1) of the Act, and means the period that starts on the entitlement date and ends at 6pm on Election Day.
Publication	Includes any means of publication including letters and information on the Internet including social media.
Public consultation	Means a process that involves an invitation or invitations 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.

4. Scope and Application of Policy

Council will function in accordance with this Policy during the caretaker period commencing at midnight on 22 September 2020 and ending at 6pm on 24 October 2020.

4.1 Role of Chief Executive Officer

The Chief Executive Officer is responsible for determining any issues that arise in the implementation of this policy.

In addition to the Chief Executive Officer's (CEO) statutory responsibilities, the CEO or his or her delegate will ensure as far as possible, that:

- All Councillors and Officers are informed of the application of this policy at least 60 days prior to the commencement of the caretaker period;
- Matters of Council business requiring major policy or significant decisions are scheduled for Council to enable resolution prior to the commencement of the caretaker period, or deferred where appropriate for determination by the incoming Council; and
- Guidelines to staff on the role and responsibilities of staff in the implementation of this policy are issued if appropriate.

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5. Decisions by Council

5.1 Major Policy Decisions

5.1.1 Definition

A **Major Policy Decision** is defined by the Act and means a decision:

- Relating to the employment or remuneration of a Chief Executive Officer (CEO) under Section 94, other than a decision to appoint an acting CEO;
- To terminate the appointment of a CEO under Section 94;
- To enter into a contract the total value of which exceeds circa \$341,375 (which represents 1% of the revenue from rates and charges levied under S 158 in the preceding year); or
- To exercise any entrepreneurial powers under section 193(5A) of the Act if the sum of the total investment involved and the total risk exposure assessed in respect of the proposal exceeds circa \$341,375.

5.1.2 Prohibition on Council

During the caretaker period, Section 93A of the Act prohibits Council making major policy decisions. Any major policy decision made during the caretaker period is deemed to be invalid under the Act.

5.1.3 Extraordinary Circumstances

If Council considers that there are extraordinary circumstances where the Moorabool Shire's community would be significantly disadvantaged by the Council not making a particular Major Policy Decision, the Council will, by resolution, request an exemption from the Minister for Local Government in accordance with section 93A(2) of the Act.

5.2 Inappropriate Decisions

During the caretaker period, Council will not make any inappropriate decisions. Section 93B of the Act defines these as decisions as those that would affect voting at an election or decisions that may unreasonably bind an incoming council and could reasonably be deferred until after the election.

6. Public Consultation

6.1 Right to Postpone

Some public consultation activities may be necessary during the caretaker 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.

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

Council will not continue or commence public consultation on any contentious or politically sensitive matter after the commencement of the caretaker period.

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6.2 Statutory Requirements

The requirements of Clause 6.1 do not apply to public consultation required under the Planning and Environment Act 1987, or matters subject to Section 223 of the Act.

7. Council Communications and Publications

7.1 Prohibition on Publishing Material during the Election Period

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 Chief Executive Officer. This power to certify cannot be delegated to another staff member.

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

7.2 Certification of Publications

Publications to be printed, published or distributed during the caretaker period must first be certified by the Chief Executive Officer.

The certification by the Chief Executive Officer 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'.

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

Publications which require certification include:

- Brochures, pamphlets, handbills, flyers, magazines and books;
- Reports (other than agenda papers and minutes in accordance with Section 7.7);
- Advertisements and notices, (includes Moorabool Matters) except newspaper notices of meetings;
- New website material;
- Social media publications (which includes Facebook and Twitter posts);
- Emails with multiple addresses, used for broad communication with the community;
- Mass mail outs or identical letters sent to a large number of people by or on behalf of Council;
- Media releases;
- Material to publicise a function or event; and
- Any publication or distribution of Councillors' speeches.

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7.3 Prohibited Material

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

- Any electoral 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.

7.4 Council Publications Including Councillor Information

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

7.5 Website

Material published on Council's website in advance of the caretaker period is not subject to certification, however existing material that is prominently displayed will be reviewed and consideration given to the removal of any such material that would be considered electoral matter, were it to be published during the caretaker period.

Councillor profiles on the Council website will be limited to a photograph and contact details. Other communication from a Councillor via the Council website will be removed.

Any material published on Council's website during the caretaker period must be certified by the Chief Executive Officer.

7.6 Annual Report

Council is required by the Act to produce and put on public display a copy of its Annual Report. The 2019/20 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.

The Annual Report does not require certification by the Chief Executive Officer, however any publication of an extract or summary of the Annual Report will require certification.

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7.7 Council and Committee Agendas and Minutes

Agenda papers and minutes of Council and Committee meetings do not require certification by the Chief Executive Officer unless they are printed or published for a wider distribution than normal.

Items submitted for Public Question Time will be reviewed to ensure that they comply with the principles of the Act and this Policy, and may be amended accordingly before publication.

7.8 Social Media

Any publication on social media sites including Facebook, Twitter, blogs and wiki pages during the election period must be certified by the Chief Executive Officer.

Staff responsible for administering individual social media sites will monitor their respective sites during the caretaker period and use moderation features where available to ensure no electoral matter is posted.

7.9 Review of Publications

Council will review all publications prior to the commencement of the caretaker period, and during the caretaker period, prior to publication and distribution, to ensure that any such publications comply with the requirements of section 55D.

8. Functions/Events

Any event or function held during the caretaker period shall relate only to legitimate Council business and shall not be used, or be capable of being construed as being used, in connection with any election activity.

All speeches prepared for use at events or functions shall be reviewed by the Chief Executive Officer to ensure the content does not breach this Policy or the Local Government Act 1989.

Councillors may make a short speech during any event or function however the speech must be limited to referring to the specific event at which the it is being delivered and thanking the participants or attendees. The speech must not have any political reference which may be construed as providing a current Councillor any advantage during the election period. Speeches will not be circulated or available for publication.

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

9. Council Resources

9.1 Application of Resources

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

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9.2 Role of Staff

Council staff will not undertake any tasks connected directly or indirectly with the election campaign of a Councillor standing for re-election or any candidate standing for election.

Council staff will not authorise, use or allocate a Council resource for any purpose that may influence voting in the election, except where it only relates to the election process and is authorised by the Chief Executive Officer.

Prior to the election period for any election the Chief Executive Officer will ensure that all members of Council staff are advised in regard to the application of the caretaker procedures.

Any staff member who considers that a particular use of Council resources may influence voting in an election or provide an undue advantage for a candidate should advise their manager before authorising, using or allocating the resource. The manager will seek appropriate advice in order to ascertain whether the use of Council resources is in accordance with this statement.

9.3 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 as a resource to assist with election campaigns. This includes laptops, iPad, notepads, telephone land lines, mobile phones, email addresses, and internet connections.

9.4 Councillors' Entitlement to Reimbursement

Reimbursements of Councillors' out-of-pocket expenses during the caretaker 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 a candidate's election campaign. Claims shall conform with requirements set out in the 'Councillors and Members of Council Committees Expense Entitlements and Resources Policy'.

9.5 Council Branding

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

9.6 Cessation of Ward Specific Publications

Ward-specific publications, or Councillor profiles and articles in the Moorabool Matters, will not be arranged by Council during the election period.

9.7 Officers' Discretion

The Council will ensure that due propriety is observed in the use of all Council resources, and Council staff 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 Chief Executive Officer or his or her delegate.

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10. Media Services

10.1 Restriction on Services

Council's Communications team undertake 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 normal Council activities and initiatives and subject to certification by the Chief Executive Officer.

10.2 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.

In the event that a spokesperson is required in relation to any publication or communication, the Chief Executive Officer will fulfil that role.

Media releases will require certification by the Chief Executive Officer.

10.3 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.

10.4 Council Employees

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

11. Information

11.1 Candidates' Access to 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 from Council officers that may improperly advantage candidates in the elections (which includes internal publications such as the Councillor Information Bulletin (CIB)).

There will be complete transparency in the provision of all information and advice during the caretaker period.

Requests for clarification relating to the provision of information should be directed to the Chief Executive Officer or his or her delegate.

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11.2 Information Request Register

Governance will maintain an Information Request Register during the caretaker 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.

11.3 Improper Use of Position

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.

12. Assistance to Candidates

12.1 Candidate Information

Council will provide candidates with a Councillor Candidate Information Kit to assist them in running and nominating for Council.

Candidates will be informed of their obligation to complete a Nomination Form which will be available from the Returning Officer, accompanied by the nomination fee.

Candidates will also be informed of the requirements to complete and submit an 'Election Campaign Return' to the Chief Executive Officer within 40 days after the election day (refer S 62 of the Act). The return must contain details of any campaign donation or gift valued at more than \$500 which was received between 30 days after the last general election and 30 days after the current election.

12.2 Advice to Candidates about the election process

All election related enquiries from candidates, whether current Councillors or not, will be directed to the Returning Officer, or where the matter is outside of the responsibilities of the Returning Officer, to the Chief Executive Officer or his or her delegate.

Councillors may use the title "Councillor" in their election material, as they continue to hold their positions for the period.

Councillors are advised that any election publication using the title "Councillor" clearly indicates that it is their own material and does not represent Council.

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

13. Related Legislation

- Local Government Act (Victoria) 1989

For reference, a number of relevant sections of the Act are included as Attachment 1.

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14. Council Plan Reference

Objective: 1 - Providing Good Governance and Leadership
Context: 1C - Our Business and Systems

15. Review

In accordance with Section 93A of the Act, this policy will be reviewed and, if required, amended not later than 12 months before the commencement of each general election period. In order to comply with this requirement, Council will review this policy by 31 August in the year preceding each general election.

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Attachment 1

Relevant Sections from the Local Government Act 1989

Section 55D Prohibition on Council

(1) A 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.

(1A) For the purposes of subsection (1), the publication of a document of a kind specified in that subsection does not include— (a) publication of any document published before the commencement of the election period; and (b) publication of any document required to be published in accordance with, or under, any Act or regulation.

Note: See definitions of publish in section 3(1) and document in section 38 of the Interpretation of Legislation Act 1984.

(2) The Chief Executive Officer must not intentionally or recklessly certify an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process.

Penalty: 60 penalty units.

(3) Despite section 98(2), the Chief Executive Officer must not delegate the power to certify any advertisement, handbill, pamphlet or notice under this section to a member of Council staff.

(4) A Councillor or member of Council staff must not intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during the election period on behalf of, or in the name of, the Council or on behalf of, or in the name of, a Councillor using Council resources if the electoral advertisement, handbill, pamphlet or notice has not been certified by the Chief Executive Officer under this section.

Section 3(1) Definitions

election period, in relation to an election, means the period that-

- (a) starts on the last day on which nominations for that election can be received; and
- (b) ends at 6 p.m. on election day;

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;

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publish means publish by any means including by publication on the Internet;

- (1A) In this Act, "electoral matter" means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the returning officer for the purposes of conducting an election.
- (1B) Without limiting the generality of the definition of electoral matter, matter is to be taken to be intended or likely to affect voting in an election 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, the voters in connection with the election.

Section 76B Primary principle of Councillor conduct

It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must—

- (a) act with integrity; and
- (b) impartially exercise his or her responsibilities in the interests of the local community; and
- (c) not improperly seek to confer an advantage or disadvantage on any person.

76BA General Councillor conduct principles

In addition to acting in accordance with the primary principle of Councillor conduct specified in section 76B, in performing the role of a Councillor, a Councillor must—

- (a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
- (b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- (c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons;

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- (d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
- (e) endeavour to ensure that public resources are used prudently and solely in the public interest;
- (f) act lawfully and in accordance with the trust placed in him or her as an elected representative;
- (g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

76D Misuse of position

- (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.

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.

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- (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.

76E 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.

93A 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.

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- (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.

93B 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;

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- (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.