

POLICY

Election Period (Caretaker) Policy



Introduction

Section 93B of the Local Government Act 1989 (the **Act**) requires all councils to adopt and maintain an election period policy which sets out standards for how Council business will be conducted between the last day on which nominations for that election can be received and 6:00pm on election day ('the election period').

Section 93B of the Act provides that an election period policy is required, including:

- a) procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the election period;
- b) limits on public consultation and the scheduling of Council events; and
- c) procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.

The policy will apply during the election period and covers:

- a) decisions that are made by Council, a special committee of the Council or a delegate of the Council;
- b) any material that is published by the Council (including social media);
- c) attendance and participation in functions and events;
- d) the use of Council resources;
- e) access to Council information; and
- f) media and communications (including public consultation).

A copy of the election period policy must be given to each Councillor as soon as practicable after it is adopted, be available for inspection by the public at the Council office and any district offices, and be published on Council's website.

Purpose

The purpose of the Caretaker Policy is to ensure that the ordinary business of local government for Hindmarsh Shire Council continues throughout the election period in a responsible and transparent manner, and in accordance with statutory requirements. The Policy is intended to assure the community that Council elections are conducted in a manner that is ethical, fair and equitable, and are publicly perceived as such. It will also serve to avoid actions and decisions being made during the election period that may be interpreted as influencing voters or binding an incoming council.

Scope

This policy applies to all employees and Councillors of Hindmarsh Shire Council, or a person or special Committee acting under a delegation given by the Council.

This policy must be complied with during an election period if ANY of the following apply to you:

- You are involved in making a major policy decision Refer to Part 3.1
- You are involved in making a significant decision that will bind the incoming Council Refer to Part 3.2
- You are about to publish written material which makes reference to a candidate (which includes sitting Councillors) or the election or an issue before the voters in connection with the election Refer to Part 4
- You are involved in the creation of any Council publication Refer to Part 4
- You are involved in any public consultation process Refer to Part 5
- You are a sitting Councillor who is planning to attend a function or event Refer to Part 6
- You supply administrative or resource support to Councillors Refer to Part 8
- You are a Councillor requesting access to Council Information Refer to Part 9
- You are a Councillor requesting media advice or services Refer to Part 10

Policy

1. *Caretaker period*

The 'caretaker period' has the same meaning as 'election period'. The election period is defined in section 31 of the Act, and means the period that starts on the last day on which nominations for that election can be received and ends at 6pm on Election Day.

2. *Role of the chief executive officer*

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 are informed of the requirements of this policy;
- Guidelines are issued to staff on their role and responsibilities in the implementation of this policy; and
- Matters of Council business requiring major 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.

3. Decisions by council during the election period

Hindmarsh Shire Council commits to the established democratic principle that elected bodies should not unnecessarily bind an incoming government during an election period, and it will make every endeavour to avoid making decisions that inappropriately bind the incoming Council.

This includes a commitment to not only comply with the requirements of section 93A of the Act, pertaining to Major Policy Decisions, but to also avoid making decisions that significantly affect the municipality and unreasonably bind the incoming Council.

3.1. Major Policy Decisions

Section 93A of the Act prohibits the making of “Major Policy Decisions” during the election caretaker period by Council, a special Committee or a person acting under a delegation given by the Council. Any major policy decision made during the election period is deemed to be invalid under the Act.

3.1.1. Major Policy Definition

In the context of this policy, major decisions include:

- The appointment or dismissal of a Chief Executive Officer, or the remuneration of a Chief Executive Officer;
- Approval of contracts with a total value which exceeds whichever is the greater of:
 - a) \$100,000 or such higher amount as may be fixed by Order in Council under section 186(1) of the Act. (note: Amounts fixed are \$150,000 for goods and services contracts and \$200,000 for works contracts); or
 - b) 1% of Council’s revenue from rates and charges levied under section 158 in the preceding financial year.
- The exercise of any entrepreneurial power under section 193 of the Act if the sum of the total investment involved and the total risk exposure assessed in respect of the proposal exceeds whichever is the greater of \$100,000 or 1% of Council’s revenue from rates and charges levied under section 168 in the preceding financial year.

3.1.2. Extraordinary Circumstances

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

3.2. Significant Decisions

Over and above the decisions specified in section 93A of the Act, Council will avoid making other decisions during the election period that are of a significant nature and which would unnecessarily bind an incoming Council.

3.2.1. Significant Decision Definition

Significant decisions include:

- Approval of contracts that require significant funding in future financial years or are regarded as politically sensitive;
- Decisions that have significant impacts on Council’s income or expenditure or that relate to expenditure on politically sensitive matters;
- Decisions of a politically sensitive nature; and
- Policy or strategy decisions.

3.2.2. Scheduling of Significant Decisions

The CEO should as far as practicable avoid scheduling significant decisions during the election period and instead, ensure that significant decisions are either considered by the Council prior to the election period or scheduled for determination by the incoming Council.

3.2.3. Extraordinary Circumstances

Council acknowledges that it has an ongoing responsibility to act in the best interests of the community. Therefore, where a delay in making a significant decision would result in significant detriment to the local community, or the broader community, the Council may make an exception to this procedure. In making an exception, the Council will deal with the matter impartially, having regard to the long term interests of the community and as transparently as possible.

3.3. Policy Decision Reference Table

Refer to the table below to determine whether a decision is affected by this policy. If you are unsure about whether a decision falls within the scope of this policy speak with the CEO or Director Corporate and Community Services.

Proposed Policy Decision	Is it allowed?	Source
Employment or remuneration of a CEO, other than a decision to appoint an acting CEO	No	Prohibited by s93A of the Act.
Terminating the appointment of a CEO	No	Prohibited by s93A of the Act.
Entering into a contract with a total value exceeding either \$100,000 or such higher amount as may be fixed by Order in Council under section 186(1). (note: Amounts fixed are \$150,000 for goods and services contracts and \$200,000 for works contracts); or 1% of Council's revenue from rates and charges levied under s158 in the preceding financial year, whichever is the greater	No	Prohibited by s93A of the Act.
Exercising any entrepreneurial power under s193 of the Act where the sum assessed under s193 in respect to the proposal exceeds either \$100,000 or 1% of Council's revenue from rates and charges levied under s158 in the preceding financial year, whichever is the greater	No	Prohibited by s93A of the Act.
Major planning scheme amendments	Generally no and only with approval from the CEO	These are internal Council requirements as defined by this policy and go beyond the statutory requirements
Changes to strategic objectives or strategies in the Council Plan	No	
An irrevocable decision that significantly affects the municipality	Generally no and only with approval from the CEO	
Any other significant decisions not specified about which will bind the incoming Council	Generally no and only with approval from the CEO	

3.4. Considerations of the CEO in Giving Approval

In the case of a significant decision referred to the CEO which is not expressly prohibited under section 93A of the Act, in deciding whether to give approval, the CEO will need to have regard to a number of factors, including:

- a) whether the decision is 'significant';
- b) the urgency of the issue (that is, can it wait until after the election?);
- c) the possibility of financial repercussions if it is deferred;
- d) whether the decision is likely to be controversial; and
- e) whether the decision is in the best interests of the Council.

3.5. Announcements of Decisions Made During the Caretaker Period

To avoid doubt, this policy applies only to the actual making of decisions, not the announcement of decisions which have been made prior to the election period. However, as far as practicable such announcements should be made before the election period begins.

4. Council publications during the election period

4.1. Prohibition on Publishing Materials During the Election Period

It is prohibited under section 55D of the Act for Council to print, publish, or distribute; or cause, permit or authorise others to print, publish or distribute any advertisement, handbill, pamphlet or notice during an election period unless it has been certified, in writing, by the CEO. This is to ensure that Council does not utilise public funds that may influence or be seen to influence people's voting intentions.

The Act also requires that all Council publications during the election period must be certified in writing by the CEO. Publications will be certified in accordance with the Election Period Certification Procedure which is included as part of this Policy (see part 15).

The power to certify material under section 55D of the Act may not be delegated by the CEO to a member of Council staff.

Publications should be read broadly to include all documents that are produced for the purpose of communicating with people in the community, including Council newsletters, advertisements and notices, media releases, leaflets and brochures, emails and mail outs to multiple addresses, electronic information and web-based productions including Council's website and social media accounts.

The CEO must not certify electoral material during the election period unless it only contains information about the election process.

Electoral matter is any matter that is "intended or likely to affect voting in an election" and this includes, but is not limited to, material that deals with the elections, candidates or issues of contention in the elections.

Material is definitely electoral matter if it:

- publicises the strengths or weaknesses of a candidate;
- advocates the policies of the Council or a candidate;
- responds to claims made by a candidate; or

- publicises the achievements of the elected Council.

Councillors may publish campaign material on their own behalf, but cannot purport for that material to be originating from, or authorised by, Council or Hindmarsh Shire Council i.e. by use of Council logos.

4.2. Considerations of the CEO in Granting Publication Approval

Except as described more specifically elsewhere in this Policy, in considering whether to grant approval for the publication of material during the election period the CEO:

- a) must not permit any materials to be published which include reference to the following:
 - i. a candidate in the election;
 - ii. a current Councillor;
 - iii. the strengths or weaknesses of a candidate;
 - iv. response to claims made by a candidate;
 - v. advocacy for, or criticism of, the policies of the Council or of a candidate;
 - vi. publicity for the achievements of the elected Council; or
 - vii. an issue before the voters in connection with the election.
- b) may approve the publication of material which only contains information about:
 - i. the election process itself; or
 - ii. Council information that does not include any reference to a current Councillor otherwise precluded by this Policy.

4.3. Council Agendas/Reports - Caretaker Statement

During the election period, the CEO will ensure that a "Caretaker Statement" is included in every report submitted to Council or to a special committee of Council for a decision.

The "Caretaker 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 the Election Period (Caretaker) Policy."
- b) "The recommended decision is not a Major Policy decision as defined in section 93A of the Local Government Act 1989. The recommended decision is a Significant Decision within the meaning of the Election Period (Caretaker) 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 for Local Government 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, but an extraordinary circumstances exemption 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 Caretaker Statements.

4.4. Hindmarsh Shire Council Website

During the election period the website will not contain material precluded by this Policy. Any references to the election will only relate to the election process. Information about Councillors will be restricted to names and contact details.

Material published on Council's website in advance of the election period is not subject to certification; however exiting 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 election period.

4.5. Hindmarsh Shire Council Social Media

The Social Media outlets for Hindmarsh Shire Council (including but not limited to Facebook and Twitter accounts) will continue to operate; however the ability for members of the public to post comments on Council's social media sites will be removed for the duration of the election period. Any material posted by the authorised social media manager and operators will be first approved by the CEO under the Caretaker Period Certification Procedure which is included as a part of this policy (see part 15), prior to publication.

4.6. Annual Report

If the publication date of the Annual Report occurs during the election period, it is affected by the legislative restrictions on publications and therefore information about Councillors will be restricted to what is required by the Local Government (Planning and Reporting) Regulations 2014 and membership of special committees and other bodies to which they have been appointed by Council.

The Annual Report does not require certification by the CEO; however any publication of an extract or summary of the Annual Report will require certification.

4.7. Council Publications

Any Council publication which is potentially affected by this policy will be reviewed by the Council's Director Corporate and Community Services or Director Infrastructure Services and then certified in writing by the CEO in accordance with the Caretaker Period Certification Procedure which is included as a part of this policy (see part 15), prior to publication. This is to ensure that any circulated, displayed, or otherwise publically available material during the election period does not contain material that may be construed as electoral matter.

4.8. Council Notice Boards and Buildings

During the election period Council noticeboards and buildings will only be used for display of material that only contains information about:

- a) the election process itself; or
- b) information that would not reasonably be determined to be electoral material.

5. *Public consultation during the election period*

5.1. Postponement of Contentious or Politically Sensitive Consultation

For the purposes of this part, public consultation means a process which involves an invitation or invitations to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy.

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 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 public consultation on any contentious or politically sensitive matter after the commencement of the election period.

The requirements of this part do not apply to public consultation required under the *Planning and Environment Act 1987*, or matters subject to section 223 of the Act.

5.2. Approval for public consultations

It is prudent for Council not to commission or approve any public consultation if such consultation is likely to run into the election period, unless prior approval is given by the Council or the CEO. Where public consultation is approved to occur during the election period the results of that consultation will not be reported to Council until after the election period, except where approved by the CEO.

6. Attendance at functions and events during the election period

In this part, reference to events and functions means gatherings of internal and external stakeholders to discuss, review, acknowledge, communicate, celebrate or promote a program, strategy or issue which is of relevance to the Council and its community and may take the form of conferences, workshops, forums, launches, promotional activities, social occasions such as dinners, receptions and balls.

6.1. Public Events Staged by External Bodies

Councillors may continue to attend events and functions during the election period. As a general rule, any such attendance will not be represented as acting in an official capacity on behalf of the organisation.

6.2. Council Events and Functions

Council organised events and functions held during the election period will only be those essential to the operation of Council. This may be varied by a Council resolution or where prior approval has been given by the CEO.

6.3. Speeches/Keynote Addresses

Councillors should not act in an official capacity, including giving public speeches or addresses at Council organised or sponsored events and functions, during the election period.

6.4. Publication of Promotional Material

In preparing any material concerning a Council organised or sponsored function or event which will be published or distributed during the election period, such preparation must be consistent with the controls under part 8 of this policy.

7. Considerations in giving approval under part 5 or 6 of this policy

In the case of a matter referred to the CEO under part 5 or 6 of this policy, which is not otherwise prohibited, in deciding whether to give approval the CEO will need to have regard to a number of factors including:

- a) whether the decision is 'significant';
- b) the urgency of the issue (that is, can it wait until after the election?);

- c) the possibility of financial repercussions if it is deferred;
- d) whether the decision is likely to be controversial; and
- e) whether the decision is in the best interests of the Council.

8. Council resources

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. Council staff should avoid assisting Councillors in ways that could create a perception that they are being used for electoral purposes. 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 Director Corporate and Community Services or the CEO.

8.1. Council Resources

Council resources, including officers, support staff, hospitality services, equipment and stationery should be used exclusively for normal Council business during the election period, and should not be used in connection with an election.

8.2. Correspondence

Councillors will sign only the necessary minimum, if any, correspondence during the election period. Correspondence addressed to councillors that relates to operational matters will be referred to the relevant Director for response. Correspondence in respect to significant, sensitive or controversial matters, or to policy matters, should be signed by the CEO. All replies to letters must be free from the perception of political bias.

8.3. Expenses Incurred by Councillors

Payment or reimbursement of costs relating to Councillors' out-of-pocket expenses incurred during the election period should only apply to necessary costs that have been incurred in the performance of normal Council duties— not campaigning, and not for expenses that could be perceived as supporting or being connected with a candidate's election campaign. In the case of Councillor claims that cover a combination of Council and electoral business, the CEO may approve a partial reimbursement to cover Council activities. No reimbursement for personal internet services or personal mobiles will be made during election periods.

8.4. Council Branding and Stationery

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

8.5. Support to the Mayor and Councillors

No staff, including support staff for the Mayor and Councillors may be asked to undertake any tasks connected directly or indirectly with an election campaign.

8.6. Community Forums and Meetings

No local community forums, ward meetings or any other forums of the type identified in the Community Engagement Framework will be held by Councillors during the election period.

9. Access to council information

All candidates have equal rights to access public information relevant to their election campaigns from the Council administration. Neither Councillors nor candidates will be provided information or

advice from Council staff that might be perceived to support and advise them during the election period.

9.1. Information and Briefing Material

Information and briefing material prepared or secured by staff for a Councillor during the election period must be necessary to the carrying out of the Councillor's role and must not be related to election issues or to issues that might be perceived to be of an electoral nature.

9.2. Information Requests

The Risk & Governance Coordinator will maintain an Information Request Register during the election period. This Register is a public document and will record all requests for information by Councillors or candidates, and the response given to those requests. Staff will be required to provide details of requests and responses to the Risk & Governance Coordinator for inclusion in the register.

Any enquiries by Councillors or candidates to staff regarding information requests or briefing material perceived to be of an electoral nature or related to election issues will be referred by staff in the first instance to the Director Corporate and Community Services for a determination.

10. Media and media services

The Council's media services are intended to promote Council activities or initiatives and must not be used in any way that might favour a candidate.

10.1. Media Advice

Any requests for media advice or assistance from Councillors during the election period will be channelled through the CEO or the CEO's delegate. No media advice or assistance will be provided in relation to election issues or in regard to publicity that involves specific Councillors.

10.2. Media Releases/Spokespersons

Media releases will not refer to specific Councillors. Where it is necessary to identify a spokesperson in relation to an issue the CEO or a member of the Senior Management Team will determine the appropriate person.

Media releases will require certification by the CEO.

10.3. Publicity Campaigns

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 activity, it must be approved by the CEO. In any event, Council publicity during the election period will be restricted to communicating normal Council activities and initiatives.

10.4. 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.

10.5. Council Employees

During the election period no Council employee may make any public statement that relates to an election issue unless statements have been approved by the CEO.

11. Equity in assistance to candidates

All candidates for the Council election will be treated equally.

11.1. Candidate Assistance and Advice

Any assistance and advice to be provided to candidates as part of the conduct of the Council election will be provided equally to all candidates. The types of assistance that are available will be documented and communicated to all candidates in advance.

11.2. Election Process Enquiries

All election process 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 Risk & Governance Coordinator or Director Corporate and Community Services.

12. Misuse of position

Using Council resources for campaigning may be a criminal misuse of a Councillor's position under section 76D of the Act. Serious penalties are prescribed for any Councillor who inappropriately makes use of their position or information obtained in the role of Councillor, to gain an advantage for themselves or for any other person.

13. References

This Policy was developed in accordance with the *Local Government Act 1989* (Vic).

14. Documents

This Policy is implemented in conjunction with the Hindmarsh Shire Councillor Code of Conduct.

15. Caretaker period certification procedure 2016



Operation: This procedure applies during the election period or caretaker period. 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 CEO, to confirm that they do not contain election material, prior to being printed or published or distributed.

Definitions: Publication should be read broadly and means documents that are produced for the purpose of communicating with people in the community, including Council newsletters, advertisements and notices, media releases, leaflets and brochures, emails and mail outs to multiple addresses, electronic information and web-based productions including Council's website and social media accounts.

Process:

- All publications during the caretaker period must be emailed to either the Director Corporate and Community Services or the Director Infrastructure Services, so that arrangements for certification can be made.
- The role of the Director is to read the proposed publication and check that no election material is present (unless it is factual election process information).
- The Director will send the proposed publication to the CEO via email with the suggested wording as set out below.
- The CEO will send back approval and certify in writing (email is acceptable and preferable). The CEO is to use the corporate email signature and the certification wording below.
- When certification is received back from the CEO, the email is to be saved in the InfoXpert file "Subject Files / Governance / Council Elections / [Year] Election / Certified Publications." The naming convention to be used when saving the email is "[insert date YYYY/MM/Certified Publication_[Insert name of publication]]." This will enable a record to be maintained of all certified publications.
- Standard text to accompany publication approval request email to the CEO:
"This material has been checked and does not contain any electoral or electoral related matter to the best of my knowledge. In accordance with the requirements of s.55D(1) of the Local Government Act 1989 can you please certify in writing that you authorise for this material to be printed, published or distributed."
- Standard certification to be used by the CEO as part of the corporate signature for certification:
"I certify that the attached material is suitable for printing, publishing or distribution on behalf of Hindmarsh Shire Council."

Administrative Updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Council department, a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be by resolution of Council.

DOCUMENT CONTROL

Election Period (Caretaker) Policy		Policy Category	Council
Version Number	1.1	Policy Status	CURRENT
Approved/Adopted By	Council	Approved/Adopted on:	6 December 2017
Responsible Officer	CEO		
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	16 March 2016	1.0	Creation of new Policy
	6 December 2016	1.1	Update to Policy