


COUNCIL POLICY

Pre-Election Caretaker Period	Adopted By Council:	DD/MM/YY	
	Date/s Revised:	--/--/--	
	Next Review Date:	05/2016	
	Document No:	CP021	
	Directorate:	Executive	
	Responsible Officer:	Chief Executive Officer	

CONTEXT

This policy is to ensure that the ordinary business of the Council will continue throughout the election period in a responsible and transparent manner and in accordance with statutory requirements. The intention of this policy is to assure the community that Council and Councillors will not use public resources in election campaigning.

The Local Government Act 1989 states:

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.*
- (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.*

DEFINITIONS

As defined in the Local Government Act 1989:

election day means—

- (a) in the case of an election, the day of an election determined under section 31 or 38;
- (b) in the case of a poll of voters', the relevant date specified in the public notice under clause 16 of Schedule 3;

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 pm. 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;

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;
- (c) 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.

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

a **significant decision**, as determined by the Chief Executive Officer, means any decision –

- (a) that may irrevocably commit the incoming Council to substantial expenditure or to other significant actions; and
- (b) that may have an irrevocable and/or significant impact on the municipality or a significant section of the community.

POLICY

1. Major Policy Decisions

The Local Government Act prohibits the making of 'Major Policy Decisions' during the election period.

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

It shall be the responsibility of the Chief Executive Officer to determine if a matter is a major policy decision. Where possible, the Chief Executive Officer will ensure that matters are scheduled for Council to ensure that major policy decisions are resolved prior to the commencement of the election period or scheduled for determination by the incoming Council.

2. Significant Decisions

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

It shall be the responsibility of the Chief Executive Officer to determine whether it is appropriate or not for Council to consider a 'Significant Decision'. In determining whether to present a 'Significant Decision' to Council for consideration, the Chief Executive Officer shall give regard to the following:

- Whether the decision is 'significant' as defined by this policy;
- The urgency of the issue
- The possibility of financial repercussions if it is deferred;
- Whether the decision is likely to be controversial; and
- The best interests of the Council and the community.

3. Council Reports

During the election period, the Chief Executive Officer will ensure that a “Caretaker Statement” is included in every report submitted to the Council or to a special committee of Council for a decision.

The “Caretaker Statement” will specify one or more of the following:

- The recommended decision is not a “Major Policy Decision”, as defined in section 93A of the *Local Government 1989*, or a “Significant Decision” within the meaning of the Pre-election Caretaker Period Policy.
- The recommended decision is not a “Major Policy Decision”, as defined in section 93A of the *Local Government 1989*. The recommended decision is a “Significant Decision” within the meaning of the Pre-election Caretaker Period Policy, but the following negative consequences of a failure to make a decision on this matter outweigh the consequences of binding an incoming Council. [Insert description of negative consequences of failure to make decision].
- The recommended decision is a “Major Policy Decision”, as defined in section 93A of the *Local Government 1989*, 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. Council Resources

It is essential that due propriety is observed in the use of all Council resources, and Council staff are required to exercise appropriate discretion in that regard. It is also important that all Councillors have access to the resources necessary to fulfil their elected roles.

In order to ensure the proper use of Council resources during the election period the following will apply:

- Council resources, including offices, support staff, hospitality, equipment, email, mobile phones and stationery will be used exclusively for normal Council business and will not be used in connection with election campaigning. Council staff are required to exercise appropriate discretion in that regard. In any circumstances where the use of Council resources might be construed as being related to a candidate’s election campaign, advice will be sought from the relevant General Manager or the Chief Executive Officer.
- Reimbursements of Councillors’ out-of-pocket expenses in 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.
- Council logos, letterheads, or other Borough of Queenscliffe branding must not be used for, or linked in any way to, a candidate’s election campaign.
- Council staff, including support staff for the Mayor and Councillors, must not be asked to undertake any tasks connected directly or indirectly with a candidate’s election campaign.
- No local community forums will be held by Councillors during the election period.
- No election material or active campaigning is to be conducted at Council sponsored festivals, events or displays.

5. Information

The Council recognises that all election candidates have rights to information from the Council administration. However, it is important that sitting Councillors continue to receive information that is necessary to fulfil their elected roles. Neither Councillors nor candidates will receive information or advice from Council staff that might be perceived to support election campaigns, and transparency will be observed and practised in the provision of all information and advice during the election period.

Information and briefing material prepared by staff for Councillors during the election period will relate only to factual matters or to existing Council policies and services. Such information will not relate to new

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 requests for information are to be directed to the Chief Executive Officer or in his/her absence the General Manager, Governance & Community.

The office of the Chief Executive will maintain an Information Request Register 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. Only information that can be reasonably accessed will be released.

6. Publicity

It is recognised that Council publicity is intended to promote normal services or operations of the council. Council publicity will not be used in any way that might be construed as intended to influence the outcome of the Council election.

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

During the election period, publicity campaigns, other than for the purpose of conducting the election, will be avoided. Where a publicity campaign is deemed necessary for a Council service or operation, it must be approved by the Chief Executive Officer. In any event Council publicity during the election period will be restricted to promoting the normal services or operations of the Council.

Any requests for media advice or assistance from Councillors during the election period will be channelled through the Chief Executive Officer. In any event, no media advice and/or assistance or media releases will be provided in relation to election campaign matters, or in regard to publicity that involves specific 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 matters that could be construed as relating to an election campaign.

Councillor participation in festivals and events should promote Council as a whole and not be used or be construed to gain advantage in support of an election campaign.

Information published on Council's website with regard to sitting councillors will be limited to statements of facts about their roles and responsibilities as a councillor. For example, contact details, roles and responsibilities as assigned by Council resolution.

7. Assistance to Candidates

All candidates for the Council election will be treated equally.

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.

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

8. Communicating the Policy

It shall be the responsibility of the Chief Executive Officer to inform Council staff, contractors, volunteers and election candidates of the adopted Pre-election Caretaker Period Policy prior to the election period.

OTHER REFERENCES

Local Government Act 1989

END