

ELECTION PERIOD POLICY

Policy Number:	2.4.10
Approved by:	Council
Date Approved:	October 2023
Date of Next Review:	June 2027
Applicable to Unit(s):	Councillors and Organisation
Responsible Officer:	Manager Organisational Performance and Governance
Related Policies:	Provision of Motor Vehicles for Councillors Policy Council Expense and Administration Policy
Related Documents:	Election Campaign Donation Returns Register Employee Code of Conduct Councillor Code of Conduct
Statutory Reference:	<i>Local Government Act 2020</i>

OVERVIEW

The purpose of this policy is to outline the continuation of the ordinary business of Wellington Shire Council throughout the election period in a responsible and transparent manner, in accordance with statutory requirements and best practice.

This policy aims to ensure that elections are conducted in an ethical, fair and equitable manner and are publicly perceived as such.

This policy commits Council during a Council election period to:

- avoid making decisions prohibited by the *Local Government Act 2020* and 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.

This policy also sets out the requirements for a Councillor or member of Council staff standing as candidates in a federal, state or council election.

THE POLICY

1. Background

- 1.1 The local government sector adopts an Election Period Policy to avoid actions and decisions that may be perceived as influencing voters or binding an incoming Council. Specific provisions have been incorporated in the *Local Government Act 2020* (the Act), that prohibit Council from making prohibited policy decisions or publishing or distributing electoral matter in an election period.
- 1.2 Section 69 of the Act prescribes the conduct of a Council during the election period. This policy sets requirements to ensure that Council complies with the Act so the elections for Council are conducted in a manner that is fair, equitable, upholds the highest standards of democratic governance and is publicly perceived as such.

2. Definitions

It should be noted that some of the terms used in this policy are defined in the *Local Government Act 2020* (the Act) and their use in this policy is consistent with the Act.

Community engagement principles means the principles specified in section 56 of the Act as follows:

The community engagement principles

The following are the community engagement principles—

- (a) *a community engagement process must have a clearly defined objective and scope;*
- (b) *participants in community engagement must have access to objective, relevant and timely information to inform their participation;*
- (c) *participants in community engagement must be representative of the persons and groups affected by the matter that is the subject of the community engagement;*
- (d) *participants in community engagement are entitled to reasonable support to enable meaningful and informed engagement;*
- (e) *participants in community engagement are informed of the ways in which the community engagement process will influence Council decision making.*

Donation period means the period—

- (a) commencing on whichever is the later of—
 - (i) 30 days after the last general election for the Council; or
 - (ii) 30 days after the last election for the Council at which the person required to give the election campaign donation return was a candidate; and
- (b) ending 30 days after election day in the current election for the Council;

Election unless otherwise expressly provided, a reference to an election means a reference to the following—

- (a) a general election conducted under section 257 of the Act;
- (b) a by-election conducted under section 260 of the Act;
- (c) a countback conducted under section 261 of the Act.

Election period means the period that—

- (a) starts at the time that nominations close on nomination day; and
- (b) ends at 6 p.m. on election day;

Electoral material means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper that is only announcing the holding of a meeting.

Electoral matter is not defined in the Act but has the same meaning as 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 Election Manager for the purposes of conducting an election.

Public consultation is not defined in the Act but 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, proposed policy, and includes discussion of that matter with the public.

Publish means publish by any means including by publication on the Internet.

Significant decision is not defined in the Act, but in this policy means a Council decision, including decisions by delegated committees or members of Council staff acting under a delegation given by Council, during an election period that:

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

3. Election Period

- 3.1 Commences 32 days prior to the election at midnight, being the last day on which nominations for that election can be received, and ends at 6:00pm on election day.
- 3.2 The Chief Executive Officer will ensure that all employees are informed of the requirements of this policy in advance of the election period commencing.

4. Decision Making

- 4.1 Careful consideration will be given to what Council decisions, including decisions by delegated committees or members of Council staff acting under a delegation given by Council, should be made in the election period, so that the incoming Councillors are not unreasonably compromised.
- 4.2 It is an established democratic practice that elected bodies should not unnecessarily bind government during an election period. The Council therefore commits to the principle that it will make every endeavour to avoid making decisions that bind the incoming Council.
- 4.3 Section 69 of the Act prohibits any Council decision, including decisions by delegated committees or members of Council staff acting under a delegation given by Council, during the election period for a general election that—
 - (a) relates to the appointment or remuneration of the Chief Executive Officer but not to the appointment or remuneration of an Acting Chief Executive Officer; or
 - (b) commits the Council to expenditure exceeding one per cent of the Council's income from general rates, municipal charges and service rates and charges in the preceding financial year; or
 - (c) the Council considers could be reasonably deferred until the next Council is in place; or
 - (d) the Council considers should not be made during an election period.
- 4.4 Additionally, section 69(3) of the Act requires Council to prohibit any decision that would enable the use of Council resources that is intended to or would likely influence voting at the election.
- 4.5 In addition to complying with all requirements of Section 69 of the Act, significant decisions as defined within this policy are also prohibited. Council will avoid making other decisions during the election period that are of a significant nature and would unreasonably bind the incoming Council.
- 4.6 Examples of inappropriate actions and decisions include:
 - allocation of community grants or other direct funding to community organisations;
 - major planning scheme amendments;
 - awarding of contracts both civil and service;
 - changes to strategic objective;
 - changes to strategies in the Council Plan;

- asking Questions on Notice;
- submitting Notices of Motion; and
- introduction of Late Items.

- 4.7 Ordinary Council, Unscheduled Council and Delegated Committee Meeting agendas and/or minutes are to be carefully vetted by the Chief Executive Officer and/or Corporate Management Team to ensure that no agenda item is included in any council agenda during the election period that could potentially influence voters' intentions or encourage candidates to use as part of electioneering under section 69(2) of the Act.
- 4.8 In extraordinary circumstances, an exception may apply to a proposed significant decision as defined by this policy, if the negative consequences of a failure to make a decision on the matter outweigh the consequences of binding an incoming Council. The matter must first be approved by the Chief Executive Officer and a Council resolution made setting out clear reasons for the exception.
- 4.9 Under section 177 of the Act, an exemption from the Minister for Local Government may be sought for a decision that is prohibited under section 69 of the Act, if Council considers that extraordinary circumstances exist which require such a decision. The matter must first be approved by the Chief Executive Officer and a Council resolution made to seek ministerial exemption.

4.10 Election Period Statement

During the election period, the Chief Executive Officer will ensure that an "Election Period Statement" is included at the start of each report submitted to an Ordinary Council Meeting and/or Unscheduled Meeting for a decision.

The "Election Period Statement" will state:

This report is being considered by Council during an election period. The recommendations, if moved and carried by Council: [insert one of the following options as appropriate] -

- Constitute neither prohibited decisions in accordance with section 69 (2) and (3) of the Local Government Act 2020, nor significant decisions within the meaning of Council's Election Period Policy.*
- Do not constitute a prohibited decision in accordance with section 69 (2) and (3) of the Local Government Act 2020, but do constitute a significant decision within the meaning of Council's Election Period Policy. An exception is required for the following reasons: [insert reasons for exception].*
- Seek an exemption from the Minister for Local Government because the matter requires a prohibited decision within the meaning of section 69 (2) and 69 (3) of the Local Government Act 2020. An exemption is required for the following reasons: [insert reasons for exemption].*
- Constitute a prohibited decision within the meaning of section 69 (2) or 69 (3) of the Local Government Act 2020, but compliance exemption was sought from the Minister for Local Government in accordance with section 177 of the Act and was granted on [insert date].*

Councillors are reminded that, under the Wellington Shire Council Election Period Policy 2023, they cannot make a decision during the election period that would be binding on the incoming Council.

Councillors are also not permitted to use the public forum provided by the Council Meeting for purposes of campaigning, or to use their position to gain electoral advantage or to disadvantage another candidate.

5. Public Consultation

- 5.1 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, proposed policy, and includes discussion of that matter with the public. This incorporates the use of the Community Engagement Principles.
- 5.2 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. Consultation 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 an election period, Council reserves the right to postpone a matter if the issue is likely to affect voting.
- 5.3 The requirements of 5.2 do not apply to public consultation required under the *Planning and Environment Act 1987*.

6. Council Resources

- 6.1 Section 304(1) of the Act prohibits a Councillor or member of Council staff from using Council resources in a way that is intended to, or is likely to, affect the result of an election, including federal, state or other Council elections.
- 6.2 Council resources, including offices, support staff, hospitality services, equipment such as mobile phones, laptops, tablets and printers, and stationery will be used exclusively for normal Council business during the election period, and shall not be used in connection with any electioneering activity.
- 6.3 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.
- 6.4 No Council logos, letterheads or other corporate branding will be used for, or linked in any way to, a candidate's election campaign.
- 6.5 Photos or images taken or provided by Council are not to be used by Councillors for the purposes of electioneering or in support of their election campaign. This applies equally to images on Council's website that may be copied.
- 6.6 No election material or active campaigning is to be conducted at Council sponsored events or be displayed in any Council building.
- 6.7 In any circumstances where the use of Council resources might be construed as being related to a candidate's election campaign, the matter must be referred to the Chief Executive Officer or their delegate.
- 6.8 To ensure compliance, the Council will observe the following during the election period:
 - 6.8.1 Public events will only be organised and run if it is totally unavoidable to conduct such events during the election period and then only with the express permission of the Chief Executive Officer;
 - 6.8.2 Speeches for Councillors will only be prepared by the Communications and Media business unit in relation to events that are part of normal services or operation of the Council and such speeches will not be circulated or available for publication;
 - 6.8.3 Media services, including media releases, will not be provided to Councillors during the election period;
 - 6.8.4 Media releases will not mention or quote any Councillor(s) during the election period;

6.8.5 All Council newsletters will not be circulated or printed during the election period; and

6.8.6 Neither the Council logo nor Council stationery will be used by Councillors in any way that relates to the election.

7. Equipment and facilities provided to Councillors for the purpose of conducting normal Council business will not be used for campaigning purposes

7.1 Where Councillors have Council funded services, such as mobile phones, land lines and internet connections, and where it is impractical for Councillors to discontinue their use of these during the election period, Councillors will reimburse the Council for usage of those services during the election period that exceeds normal usage levels. Councillors may wish to consider the specific ways to administer this procedure. For instance, Councillors may decide to use a private phone for all election enquiries and publicise such number on election material.

7.2 Councillors standing for re-election must not use Council equipment as a resource to assist with election campaigns. This includes photos or images provided by Council for past Council specific activities.

8. Information

8.1 Candidates' Access to Information

Sitting Councillors will continue to receive information that is necessary to fulfill their existing elected roles, however sitting Councillors and candidates will not receive information or advice from Council officers that may improperly advantage candidates in the elections.

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

8.2 Information Request Register

An Information Request Register will be maintained by the Corporate Services division during the election period. This register will be a public document that records all requests relating to electoral matters and non-routine requests for information by Councillors and candidates, and the responses given to those requests.

Responses to Councillors and candidate requests will be provided by the Chief Executive Officer or General Managers. Managers will be required to discuss the request and the proposed response with their General Manager prior to the response being provided.

Only Information that can reasonably be accessed will be released.

9. Misuse and Improper Direction of Position

9.1 Section 123 of the Act prescribes serious penalties for any Councillor who inappropriately makes use of their position or information obtained in the role of a Councillor, to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person or to cause, or attempt to cause, detriment to the Council or another person.

10. Assistance to Candidates

10.1 All candidates for the Council election will be treated equally.

10.2 All election related enquiries from candidates, whether sitting Councillors or not, will be directed to the Election Manager or, where the matter is outside the responsibility of the Election Manager (such as the CEO list), to the Chief Executive Officer or a designated

member of Council staff.

- 10.3 Candidates will be informed of their obligation to complete a Nomination Form which will be available from the Election Manager and electronically via the Victorian Electoral Commission's website, accompanied by the nomination fee.
- 10.4 Candidates will also be informed of the requirements to complete and submit an "Election Campaign Donation Return Form" to the Chief Executive Officer within 40 days after the Election Day.

An election campaign donation form must:

- (a) Be in the prescribed form; and
- (b) Contain the prescribed detail in respect of any gifts received during the donation period, by the candidate or on behalf of the candidate, to be used for or in connection with the election campaign.

11. Communication

- 11.1 Council communication will not be used in any way that might influence the outcome of a Council election.
- 11.2 During the election period, no employee will initiate any public statement that relates to an election issue. Public statements are not only formal press releases but also verbal comments at meetings, functions and events where attending as part of their Council role.
- 11.3 Any requests from Councillors for media advice or assistance during the election period will be channelled through the Chief Executive Officer.
- 11.4 In response to media enquiries, the Chief Executive Officer, General Managers or the Communications and Media business unit will only provide a response and such information should relate to current services and operations. Where a spokesperson is required, the Chief Executive Officer or delegate will determine the appropriate person.
- 11.5 In the election period, no media releases will be issued quoting or featuring any Councillor.
- 11.6 During the election period, Council initiated communications shall be restricted to communication of normal Council activities.
- 11.7 No media advice or assistance will be provided to Councillors in relation to election campaign matters.
- 11.8 No publicity will be provided that involves specific Councillors.
- 11.9 Councillors should not use their position as an elected representative or their access to Council staff and other Council resources or information in support of an election campaign. This includes photos or images provided by Council for past Council activities.
- 11.10 Contact with the local media will be restricted to the communication of normal Council activities and responding to questions not involving the election or possible election outcomes.
- 11.11 Publicity of Council events (if any during the election period) will be restricted to the communication of factual material and will not mention or quote any Councillor.
- 11.12 Councillor participation at Council sponsored events (if any during the election period) should not be used to gain attention in support of an election campaign. Council sponsored events includes launches and any other public forum outside of the normal Council meeting cycle – the easiest way to deal with these is to simply not have them during the election period.

12. Council Publications

- 12.1 Section 304 of the Act makes it an offence to misuse resources to affect the result of an election or intentionally produce election material during an election period.
- 12.2 A Councillor or member of Council staff must not use Council resources to intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed any electoral material during the election period on behalf of, or purporting to be on behalf of, the Council unless the electoral material only contains information about the election process or is otherwise required in accordance with, or under, any Act or regulation.

12.3 Management of communications intended for release during the election period:

Any Council publication which is potentially affected by this policy must be presented for review and approval by Council's Coordinator Communications and Media prior to publication. This is to ensure that any circulated, displayed or otherwise publicly available material during the election period does not contain material that may be construed as 'electoral matter'.

- 12.4 Electoral material has been interpreted to refer to documents produced for the purpose of communicating with the community, including:
- Council newsletters;
 - Advertisements and notices, for example job advertisements and public notices of contracts;
 - Media releases;
 - Leaflets and brochures;
 - Mailouts to multiple addresses.

All the above publications must be managed in accordance with clause 12.3.

- 12.5 Material is definitely electoral matter if it consists of any of the following:
- publicises the strength or weakness 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;
 - publicises matters that have already been the subject of public debate;
 - matters that are known to be contentious in the community and likely to be the subject of election debate;
 - deals with Election Candidates' statements;
 - refers to Councillors or candidates by name or by implicit reference.
- 12.6 The publication of material specified above applies to all of Council's websites under the auspice of Council. Any new pages on the website or new material must be managed in accordance with clause 12.3 during the election period.
- 12.7 The recommended practice, in line with state and federal governments, is where possible; avoid all publication activity during the election period except where it is essential for the conduct of Council operations.

- 12.8 A number of Council publications with reference to either current Councillors or candidates, both on the website and public display will be withdrawn from display during the election period.
- 12.9 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.
- 12.10 Profiles of the current Mayor and Councillors will be removed from Council's website during the election period but retain their contact details for their day-to-day role as a Councillor i.e. names, photos and mobile phone numbers.
- 12.11 Any new material published on Council's website during the election period that may be considered to be an advertisement, handbill, pamphlet or notice must be managed in accordance with clause 12.3.
- 12.12 Council is required by the Act to produce an annual report, and the annual report may be published during the election period. The annual report will not contain any material that could be regarded as overt electioneering or that inappropriately promotes individual Councillors but will fulfill its statutory obligations on reporting matters. In accordance with the requirements of section 100 of the Act, Council may be required to consider the annual report at a meeting of Council held during the election period.
- 12.13 Any publication on social media sites such as Facebook, Twitter or Council blogs that are under the auspice of Council must be managed in accordance with clause 12.3.

13. Councillor to declare their candidacy in a state or federal election

- 13.1 In accordance with the Councillor code of conduct, a Councillor who nominates as a candidate for a state or federal election must apply for leave of absence from the Council and this leave of absence must commence no later than the date of their nomination as a candidate with the relevant electoral commission for the election and conclude no earlier than the close of voting for the election. During this period, a Councillor who is on a leave of absence must not attend meetings of the Council or otherwise act as a Councillor.

14. Council staff standing as candidates in a state or federal election

- 14.1 As soon as practicable after becoming a candidate in a state or federal election, a member of Council staff must advise the Chief Executive Officer in writing.
- 14.2 Members of Council staff standing as candidates are required to comply with Council policies, particularly in relation to declaring and managing any possible real or perceived conflicts of interests, and as a risk mitigation strategy, are encouraged to take a leave of absence from the formal nomination date until election day. Other measures may also be required.

15. Council staff standing for election as Councillor

- 15.1 In the event that a member of Council staff stands for election as a Councillor for Wellington Shire Council, they must:
 - (a) Inform the Chief Executive Officer immediately on becoming a candidate for Election;
 - (b) In accordance with sections 34 and 256 of the Act, take leave for the duration of the election period to stand for election to the office of Councillor (with leave commencing, at the latest, from the time of nominating as a candidate);
 - (c) Return any Council equipment (including, but not limited to, motor vehicles, telephones and computers), documents or information that is not available to the

public for the duration of the election period; and

(d) If elected, resign as a Council staff member in accordance with section 34 and 256 of the Act immediately upon being declared elected.

15.2 A member of Council staff may stand for election to another Council without being required to follow the above process, but they must continue to comply with this policy and Employee Code of Conduct as a Council staff member including declaring any possible real or perceived conflicts of interest.

HUMAN RIGHTS

Wellington Shire Council is committed to upholding the Human Rights principles as outlined in the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* and referred to in Council's Human Rights Policy. The Human Rights Checklist has been completed and this policy accords with Council's policy commitment to uphold human rights principles.

REVISION HISTORY

VERSION	MAJOR / MINOR UPDATE	SUMMARY OF CHANGES
1.0	Minor update (Dec 2022)	Updated Responsible Officer Minor formatting and grammar
1.1	Minor update (October 2023)	Minor formatting and grammar. Purpose clarified. Definitions moved from Appendix to main policy. 'Major policy decision' deleted as not relevant under <i>Local Government Act 2020</i> . 'Election' and 'significant decision' added to definitions. Update to explanation of and the substantive election period statement to include reference to the Act and improve clarity. Removal of the requirement for the CEO to certify council publications. This was a requirement under Section 55D of the <i>Local Government Act 1989</i> which is no longer in force. Inclusion of a process to manage communications intended for release during the election period. Setting out the requirements for a Councillor or member of Council staff who is a candidate in an election including a federal, state or council election. Removal of Major Policy definition as this related to a revoked section of <i>Local Government Act 1989</i> . List of prohibited decisions updated to align with section 69 of <i>Local Government Act 2020</i> .