

Council Election Period (Caretaker)	Document No:	SCS-023
	Approval Date:	23 July 2019
	Approved By:	Council
	Review Date:	April 2023
	TRIM Reference	D19/8783
Responsible Officer:	General Manager Governance & Infrastructure	
Authorising Officer:	Chief Executive Officer	

1. Purpose

The purpose of this policy is to provide clear procedures and practices that explain how Council business will be conducted in the period leading up to a Council election ie during the election period. This is to ensure that Council elections are not compromised by inappropriate electioneering by existing Councillors and to safeguard the authority of the incoming Council.

2. Scope

During the election period, the business of Council still needs to continue and ordinary matters of administration still need to be addressed. This policy establishes a series of practices applicable during the election period.

3. Application

This policy applies to Council, Councillors, special committees, employees and contracted service providers.

4. Definitions

The Act	The Local Government Act 1989
Election (caretaker) Period	The election (caretaker) period preceding a General Election. It is defined in the Local Government Act 1989 as starting on the last day on which nominations for that election can be received and ending at 6pm on election day (ie 32 days leading up to General Election day).
General Election	The statutory process by which Councillors are elected.
Public Consultation:	The process involving an invitation or invitations to individuals, groups or organisations or the community generally to comment on an issue or proposed action or proposed policy, including discussion of that matter with the public.

5. Policy

Council will ensure that, during the election period, its business is conducted in a way which does not compromise the election process and which safeguards the authority of the incoming Council. It will ensure that candidates are treated equally, fairly and transparently, with no advantage being provided to sitting Councillor candidates.

This policy is compliant with the legislative requirement under section 93(B) of the Act to prepare, adopt and maintain an election period policy in relation to procedures to be applied by Council during the election period.

The policy must be reviewed and, if required, amended not later than 12 months before the commencement of each subsequent election period.

Council's Election Period Policy must include:

- procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the period before a general election
- limits on public consultations and the scheduling of Council events and
- procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the elections (subject to confidentiality and privacy considerations).

Surf Coast Shire Council's policy therefore addresses the following areas:

- Major policy and inappropriate decisions
- Use of Council resources
- Provision of information
- Council communications and publicity
- Functions, public consultation and events
- Travel and accommodation
- Councillor expenditure
- Advice to candidates
- Monitoring the policy.

5.1 Major Policy Decisions and Inappropriate Decisions

Section 93A of the Act prohibits a Council, special committee or a person acting under a delegation given by the Council from making major policy decisions during the election (caretaker) period. In the event of exceptional circumstances requiring a Council decision, an application may be made to the Minister in accordance with Section 93A of the Act. A major policy decision that is made in contravention of this requirement is invalid.

Major policy decisions include any decision:

- 5.1.1 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;
- 5.1.2 to terminate the appointment of a Chief Executive Officer under section 94;
- 5.1.3 enter into a contract the total value of which exceeds whichever is the greater of:
 - One per cent of the Council's total revenue from rates and charges under Section 158 in the preceding financial year. (This does not include revenue from special rates or special charges).
 - Under section 186(1) of the Act, being :
\$150,000 for goods and services contracts;
\$200,000 for works contracts.
- 5.1.4 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.

Council will also refrain from making inappropriate decisions during the election period ie 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.

Careful consideration should be given regarding decisions that are being made at Council or special committee meetings in the election period, to ensure that the authority of the incoming Council is not unreasonably compromised. Council will make every effort to either reschedule most decisions until after the new Council commences its term, or if that is not appropriate, bring decisions forward so they are determined before the election period starts.

Examples of decisions that will be avoided during the election period include allocating community grants or other direct funding to community organisations, major planning scheme amendments and changes to strategic objectives and strategies in the Council Plan. During the election period, any other decision will be considered by Council or special committees only if absolutely necessary for Council operational purposes or pursuant to a statutory requirement.

Papers prepared for Council or special committee meetings during the election period will be carefully vetted to ensure that no agenda matter is included that could potentially influence voters' intentions at the forthcoming election or could encourage Councillor candidates to use the matter as part of their campaign platform.

Councillors will refrain from moving motions on or raising matters at a meeting that could potentially influence voting at the election.

5.2 Entrepreneurial Powers

During the election period, the Council must not exercise any entrepreneurial power under section 193 of the Act if the amount assessed under section 193(5A) exceeds the specified value. The amount assessed under section 193(5A) of the Act is the value of the total investment and the total risk exposure.

The specified value that this must not exceed is the higher of the following amounts:

- One per cent of the Council's total revenue from rates and charges (under section 158) in the preceding financial year. This does not include revenue from special rates or special charges.
- \$100,000.

5.3 Council Publications

Section 55D of the Act imposes limitations on Council publications during the election period. This is to ensure that Council does not publish material with public funds that may influence, or be seen to influence, people's voting decisions.

Section 55D of the Act refers specifically to "*an advertisement, handbill, pamphlet or notice*" as being the type of material that is subject to the certification process.

This refers to documents that are produced for the purpose of communicating with people in the community including:

- Council newsletters
- Advertisements and notices
- Media release
- Leaflets and brochures
- Mail outs to multiple addressees

Section 55D also applies to the publication of such material on the Internet.

This section provides that the restriction on publication of a document does not include any document published before the election period and any document required to be published under the Act, such as rate notices, food premises registrations and parking fines, which may continue to be disseminated during the election period without limitation.

The Annual Report that is compiled during the election period will not contain any material that could be regarded as electioneering or that inappropriately promotes individual Councillors. Information about Councillors will be restricted to names, contact details, titles, membership of special committees and other bodies to which they have been appointed by the Council.

Council staff will check existing publications and online information before the election period commences and, where appropriate, temporarily withdraw any material that might reasonably influence the election.

5.4 Certification Process

Relevant Council publications must be certified by the CEO before they may be printed, published or distributed during the election period, whether by the Council or by anyone acting for the Council. This may require certification before the election period for some material to be issued in the election period.

The CEO must not certify a publication that contains electoral matter, unless that material is about the election process only.

The CEO's certification must be in writing and cannot be delegated to anyone else.

5.5 Council Communications

Council communications are a legitimate way to promote Council activities and services. It is important that all Councillors have access to the Council's communication resources to enable them to fulfill their elected roles. However they will not be developed or used in support of a candidate's election campaign.

During the election period:

- 5.5.1 A Council employee must not make any public statement that could be construed as influencing the election. Statements of clarification may be required from time to time and these are to be made in consultation with the Community Relations department.
- 5.5.2 In the event that a spokesperson is required for any publication or communication, the Mayor or the Chief Executive Officer shall fulfill that role.
- 5.5.3 No media advice or assistance will be provided to Councillors in relation to election campaign matters.
- 5.5.4 Councillors will not use their position as an elected representative or their access to Council staff and other Council resources to gain media attention specifically in support of an election campaign.
- 5.5.5 Councillor profiles on the Council website will be limited to a photograph and contact details. All other communication from a Councillor via the Council website will be removed.

5.6 Council Resources

It is essential that due propriety is observed in the use of all Council resources. It is also important that all Councillors have access to the resources necessary to fulfill their elected roles. In order to ensure the proper use of Council resources during the election period the following will apply:

- 5.6.1 Council resources, including offices, staff, hospitality, equipment, email, mobile phone and stationery will be used exclusively for normal Council business and will not be used in connection with election campaigning.
- 5.6.2 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, in accordance with Councillors Entitlement Policy (SCS-001).
- 5.6.3 Council logos, letterheads, or other Council branding should not be used for, or linked in any way to, a candidate's election campaign.
- 5.6.4 Council staff will not be asked to undertake any tasks connected with a candidate's election campaign.

5.7 Information

Access to information held by Council will be made equally available and accessible to all candidates during the election period. Council recognises that all election candidates have the right to receive information from the Council administration, subject to the Privacy and Data Protection Act 2014 (Victoria) which may prevent the disclosure of certain information. However, it is important that sitting Councillors continue to receive the information that is necessary to fulfill their elected roles. Councillors shall not request or receive information or advice from Council staff to support election campaigns, and there shall be complete transparency in the provision of all information and advice during the election period.

A process will be instigated whereby information requested by any candidate will be made available to all candidates in a timely manner, having regard to the reasonableness of the request. This will be achieved via a dedicated candidate information page on Council's website or a group email, as appropriate.

Requests for clarification relating to provision of information should be directed to the Governance and Risk Department who may refer the request to the Chief Executive Officer or appropriate senior management.

5.8 Functions, Public Consultation and Events

Public consultation and Council events will not take place during the election period unless the CEO can justify to the community the special circumstances making it necessary to conduct these activities and how risks related to influencing the election will be mitigated or prevented. Any event, public consultation or function that is held during the election period shall relate only to legitimate Council business and shall not be used, or be able to be construed to be used, in connection with any election activity.

All speeches prepared for use at events or functions shall be reviewed by the Manager Governance and Risk in conjunction with the Coordinator Communications and Community Engagement to ensure the content does not breach this Policy or The Act.

Where deemed appropriate Councillors may make speeches during events or functions however the speech must not have any political reference which may be construed as giving a sitting Councillor any advantage during the election period.

5.9 Travel and Accommodation

During the election period Councillors shall not undertake any interstate or overseas travel in their capacity as a Councillor. In circumstances where it is imperative that the Mayor (or nominee) represents Council on a delegation or forum, Council may by resolution approve such attendance. If consideration by Council is impractical, the Chief Executive Officer may determine the issue.

5.10 Advice to Candidates about the election process

All candidates for the Council election will be treated equally. Towards this outcome:

- 5.10.1 Any advice to be provided to candidates as part of the conduct of the Council election should be provided equally to all candidates.
- 5.10.2 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 (or appropriate senior management).

5.11 Monitoring the Policy

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

6. Records

Record	Retention/Disposal Responsibility	Retention Period	Location
Publications certified by CEO	Coordinator Governance and Procurement	4 years	Relevant Trim File

7. Attachments

Not applicable.

8. References

Local Government Act 1989
Victorian Electoral Act 2002 and Regulations
SCS-001 Councillors Entitlement Policy
SCS-002 Code of Conduct Policy