



BOROONDARA
City of Harmony

Election Period Policy

March 2016

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Table of contents

1	Introduction	3
2	Purpose	3
3	Definitions	3
4	Accountability	6
4.1	Council	6
4.2	Chief Executive Officer	6
5	Decisions by Council	7
5.1	Major Policy Decisions	7
5.2	Inappropriate decisions	7
6	Public Consultation	8
6.1	Postponing consultation	9
7	Council Publications	9
7.1	Prohibition on Publishing Material during the Election Period	9
7.2	Certification of Publications	9
7.3	Council Publications Including Councillor Information	10
7.4	Existing Publications	10
7.5	Annual Report	11
7.6	Council and Special Committee Meetings	11
7.7	Social Media	12
8	Council Events	12
9	Council Resources	12
9.1	Application of Resources	12
9.2	Role of Governance staff	13
9.3	Use of Council Equipment by Councillors	13
9.4	Councillors' Entitlement to Reimbursement	13
9.5	Council Branding	13
9.6	Cessation of Ward Meetings	13
9.7	Councillor Correspondence	13
9.8	Officers' Discretion	13
10	Media Services	14
10.1	Restriction on Services	14
10.2	Media Releases/Spokespersons	14
10.3	Councillors	14
10.4	Council Employees	14
11	Information	14
11.1	Candidates' Access to Information	14
11.2	Information Request Register	15
12	Assistance to Candidates	15
12.1	Candidate Information	15

1 Introduction

The *Local Government Act 1989* ('the Act') requires Council to adopt an election period policy in relation to procedures to be applied by Council during the election period for a general election.

The 'election period' as defined by the Act for the 2016 local government elections will commence at midnight on 20 September 2016 and end at 6pm on election day, 22 October 2016.

This policy replaces the Pre-Election Caretaker Policy adopted by Council on 27 August 2012.

2 Purpose

This policy has been developed in accordance with the Act and to ensure the City of Boroondara elections on Saturday 22 October 2016 (and subsequent elections) are conducted in a manner that is ethical; fair and equitable; and are publicly perceived as such.

As required by the Act, the policy contains:

- (a) procedures intended to assist the Council in making appropriate decisions and using resources appropriately during the election period before an election;
- (b) guidelines 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.

3 Definitions

TERM	DEFINITION	SOURCE
Chief Executive Officer (CEO)	<p>Means</p> <p>(a) The person appointed by a Council to be its Chief Executive Officer or any person acting in that position; and/or</p> <p>(b) The Chief Executive Officer's delegate pursuant to section 98 and 55D of the Act; and/or</p> <p>(c) Such other person that the Chief Executive Officer selects for the purpose of giving effect to this Policy.</p>	<p>Act s.3</p> <p>Policy</p> <p>Policy</p>

TERM	DEFINITION	SOURCE
Councillor-Candidate	Means a current Councillor who has nominated, or is considering nominating for election in the 22 October 2016 Council elections.	Policy
Electoral matter	<p>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.</p> <p>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 -</p> <p>(a) the election; or</p> <p>(b) a candidate in the election; or</p> <p>(c) an issue submitted to, or otherwise before, the voters in connection with the election.</p> <p>Electoral matter includes material which:</p> <ul style="list-style-type: none"> • 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. 	Act s.3(1A) & (1B) Policy
Election Period	<p>In relation to an election, means the period that -</p> <p>(a) starts on the last day on which nominations for that election can be received; and</p> <p>(b) ends at 6 p.m. on election day;</p> <p>[That is, midnight on 20 September 2016 through to 6pm on 22 October 2016].</p>	Act s.3
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;	Act s.3

TERM	DEFINITION	SOURCE
Inappropriate decisions	<p>Inappropriate decisions made by a Council during an election period include any of the following—</p> <ul style="list-style-type: none"> (a) decisions that would affect voting in an election; (b) decisions that could reasonably be made after the election. 	Act s.93B
Major policy decision	<p>means any decision -</p> <ul style="list-style-type: none"> (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 - <ul style="list-style-type: none"> (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 [\$1.52m]; (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. 	Act s.93A
Nomination Day	Means the last day on which nominations for an election can be received, which is the 32nd day before election day consistent with Sch.2, Cl.3 of the Act.	Policy

TERM	DEFINITION	SOURCE
Publication	Means: a) a published work in any form (e.g. hardcopy or digital) including but not limited to brochures, articles, letters, posters, policies, strategies, papers, letters, commentary. b) the act or process of publishing.	Policy
Publish	Means publish by any means including by publication on the Internet.	Act s.3
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, and includes discussion of that matter with the public.	Policy
Significant decision	Means an irrevocable decision that significantly affects the municipality.	Policy

4 Accountability

4.1 Council

Council will function in accordance with this Election Period Policy during the **election period**.

4.2 Chief Executive Officer

In addition to the Chief Executive Officer's statutory responsibilities, the **Chief Executive Officer** will:

- Ensure as far as possible, that all councillors and officers are informed of the application of this policy 30 days prior to the commencement of the **election period**.
- Ensure as far as possible, that matters of Council business requiring **significant decisions** are scheduled for Council to consider prior to the commencement of the **election period**, or deferred where appropriate for determination by the incoming Council.
- Not include in the order of business for any Ordinary Council or Special Committee meeting scheduled during the **election period**, any matters requiring **major policy decisions** or matters that could be considered **inappropriate decisions**.

The **Chief Executive Officer** may issue guidelines to staff on the role and responsibilities of staff in the implementation of this policy.

The **Chief Executive Officer** may also issue guidelines to councillors to inform them about changes to services, processes and procedures that may impact them in their role during the **election period**.

5 Decisions by Council

During the **election period** reports to Council and Special Committee meetings will be carefully vetted to avoid listing matters on the Agenda which could foreseeably influence voters' intentions at the forthcoming election; or encourage **Councillor-candidates** to use the matter as part of their election platform.

Councillors commit to refrain from moving motions on, or raising matters at Council or Special Committee meetings that could potentially influence voting at the election.

5.1 Major Policy Decisions

During the **election period**, Section 93A of the Act prohibits Council from making a **major policy decision**.

Any **major policy decision** made during the **election period** is deemed to be invalid under the Act.

If Council considers that there are extraordinary circumstances where the 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.

5.2 Inappropriate decisions

The ordinary, day-to-day business of local government must continue throughout the **election period**. That business will be conducted by Council, its delegates and staff in a responsible and transparent manner, in accordance with statutory requirements.

Most Council decisions are not made at Council meetings. Significant decision-making power is formally delegated to staff and the decision of a delegate is 'deemed' to be a decision by Council. Because a delegate's decision is the same as a Council decision, the same constraints that apply to decisions made in Council and Committee meetings apply when delegates make decisions. Delegates should therefore give careful consideration to the exercise of their powers during the **election period**.

Should a delegate be required to make a decision(s) under delegation in the ordinary course of Council business during the **election period**, the delegate must satisfy themselves beforehand that the decision is not a **major policy decision**, an **inappropriate decision**, or an **significant decision**.

The following matters may be considered inappropriate decisions during the **election period**:

- Allocation of community grants;
- Direct funding to community organisations;
- Major planning scheme amendments; or
- Changes to strategic objectives and strategies in the Council Plan.

6 Public Consultation

Consultation is an integral part of Council's policy development process and operations.

Surveys, blogs, invitations to put forward submissions, and other community engagement activities should be avoided during the **election period**.

Council will not continue or commence **public consultation** on **major policy decisions**, contentious or politically sensitive matters after the commencement of the **election period**.

However, some **public consultation** activities may be necessary during the **election period** to facilitate the day-to-day business of Council.

Public consultation associated with activities and decisions which are the subject of statutory processes, for example

- Applications under the *Planning and Environment Act 1987*
- Consultation required under Section 223 of the *Local Government Act 1989*

can be expected to continue through the **election period** to ensure Council does not breach its statutory obligations.

Public consultation not associated with activities and decisions which are the subject of statutory processes shall only proceed if prior approval is given by the **Chief Executive Officer**.

Where community engagement has occurred prior to the **election period** but the report has not yet proceeded to a Council or Special Committee meeting, results of the consultation will also not be provided to a Council or Special Committee meeting until the **election period** has concluded.

Any **public consultation** that does proceed during the **election period** will be vetted for **electoral matter** and express or implicit links to the election.

6.1 Postponing consultation

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 where possible and practicable, to postpone **public consultation** and any associated decisions where the matter is considered likely to affect voting in the election.

7 Council 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**.

The words “advertisement, handbill, pamphlet or notice” are to be interpreted broadly and will include, amongst other things:

- Brochures, pamphlets, handbills, flyers, magazines and books
- Newsletters and other circulars (hardcopy and/or electronic)
- New website material and social media posts
- Mass mail outs or letters to a large number of people
- Media releases
- Material to publicise a function or event
- Notices or posters placed on Council controlled property, including walls, noticeboards, and electronic noticeboards and screens

The prohibition in Section 55D does not apply to the **publishing** of any document **published** before the commencement of the **election period** or **publication** of any document required to be **published** in accordance with, or under, any Act or regulation.

7.2 Certification of Publications

New **publications** to be printed, **published** or distributed during the **election period** must first be certified by the **Chief Executive Officer** personally.

The certification by the **Chief Executive Officer** will be in writing on or affixed to a copy of the publication and be in one of the following forms:

'Certified by the Chief Executive Officer in accordance with Section 55D of the Local Government Act 1989'.

'Certified pursuant to s. 55D of the Local Government Act 1989'

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

Publications which require certification may include:

- Brochures, pamphlets, handbills, flyers, magazines and books
- Reports (other than agenda papers and minutes in accordance with Clause 7.6)
- Advertisements and notices, except newspaper notices of meetings
- New website material
- Social media **publications**
- 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
- Any **publication** or distribution of councillors' speeches

Documents permitted or required under legislation (such as rate notices, food premises registrations and parking fines) are not **publications** for the purposes of the prohibition under section 55D of the Act and do not require certification.

7.3 Council Publications Including Councillor Information

References to councillors who are standing for re-election in Council **publications** printed, **published** or distributed during the **election period** could be considered **electoral matter** and will be carefully vetted during the certification process.

7.4 Existing Publications

Existing **publications**, including material **published** on Council's website in advance of the **election period**, are not subject to certification requirements.

Existing **publications** will be reviewed at the start of the **election period**. **Publications** or material which is prominently displayed and might be regarded as likely to influence how people vote may be temporarily removed from display. Any material so removed may still be provided to members of the community upon request.

In the context of Council's website, prominently displayed means content visible on:

- the homepage (www.boroondara.vic.gov.au) and its associated tab headings, (News, Your say, and Meetings)
- the landing pages:
 - www.boroondara.vic.gov.au/residents
 - www.boroondara.vic.gov.au/Your_Council
 - www.boroondara.vic.gov.au/our-City
 - www.boroondara.vic.gov.au/business
 - libraries.boroondara.vic.gov.au

Councillors' contact information will remain available on the website during the **election period**, but Councillors' profiles will be removed.

7.5 Annual Report

Council is required by the Act to produce and put on public display a copy of its Annual Report. The 2016/17 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.

7.6 Council and Special Committee Meetings

Council is required by the Act to:

- Give public notice of Council meetings and Special Committee meetings; and
- Produce and make available agendas and minutes of Council meetings and Special Committee meetings.

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

7.7 Social Media

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

As public comments posted on Council's social media sites could be considered **electoral matter**, staff responsible for administering social media sites will, where possible, disable public commenting. Where public commenting cannot be disabled, staff will monitor their respective sites during the **election period** and where possible, remove **electoral matter** as soon as reasonably practicable after it is posted.

8 Council Events

Where practicable, civic and ceremonial Council events should not be scheduled during the **election period**. Civic and ceremonial events do not include routine events and programs conducted as part of Council's day-to-day activities (e.g. immunisation sessions, gallery exhibitions, library programs).

Any civic or ceremonial council event held during the **election period** should meet one or more of the following criteria:

- It is a planned event endorsed by the current Council Plan;
- It is routinely held at the same time of year;
- It is a commemorative or anniversary event held on or near the anniversary date;
- It demonstrates a clear community benefit, or serves an educational or welfare purpose; or
- It contributes to cultural development, social awareness or sense of community identity.

9 Council Resources

9.1 Application of Resources

Council resources, including offices, staff, hospitality, services (including phone, internet and email), property, equipment and stationary must be used exclusively for normal Council business during the **election period** and must not be used in connection with any election campaign or issue.

Councillor-candidates must not use Council resources in connection with any activities associated with their election campaigns, regardless of any entitlement to "reasonable personal use" of Council equipment under any other policy, protocol or terms of use.

9.2 Role of Governance staff

The Secretary to the Mayor and Councillors, and other Governance staff, will not be asked to undertake any tasks connected directly or indirectly with the election campaign of a councillor standing for re-election.

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 during the **election period**, subject to existing protocols and terms of use.

9.4 Councillors' Entitlement to Reimbursement

Reimbursements of councillors' out-of-pocket expenses during the **election period** will only apply to expenses incurred in the performance of normal Council duties, and not for expenses that support or are connected with a candidate's election campaign.

9.5 Council Branding

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

9.6 Cessation of Ward Meetings

Ward meetings and ward-specific **publications** will not be arranged by Council during the **election period**.

9.7 Councillor Correspondence

While the routine business of Council must continue, it is important that the administration is not perceived as providing **Councillor-candidates** any undue advantage whilst campaigning.

During the election period, any responses prepared by the administration in response to correspondence addressed to a Councillor-candidate, will therefore be signed by the **Chief Executive Officer** or relevant Director or Manager as appropriate. Such responses will acknowledge the administration is responding due to limitations imposed upon councillors during the **election period**.

9.8 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**.

10 Media Services

10.1 Restriction on Services

During the **election period**, Council resources must not be used in any way that might promote a councillor as an election candidate.

New 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 during the **election period** will minimise references to specific councillors and will not identify any councillor in a manner that could promote a councillor as an election candidate. Where it is necessary to identify a spokesperson, the **Chief Executive Officer** or his delegate will be consulted.

Media releases will require certification by the **Chief Executive Officer**.

10.3 Councillors

Councillors must not use their position as an elected representative or their access to Council Officers and other Council resources to gain media attention during the **election period** 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 from the **Chief Executive Officer** has been obtained.

11 Information

11.1 Candidates' Access to Information

Council recognises that all election candidates have certain rights to information relevant to their election campaigns from the Council administration subject to legislative constraints such as:

- Sections 76D and 76E of the Act which prohibit Councillor candidates from misusing or inappropriately making use of their position; and
- the *Privacy and Data Protection Act 2014*.

Councillors will continue to receive information that is necessary to fulfil their existing elected roles. Beyond that, only information that is readily available to any member of the community will be provided to any candidate.

11.2 Information Request Register

An Information Request Register will be maintained by the Manager Governance during the **election period**. This Register will be a public document and record requests by persons who identify themselves as candidates when seeking information relating to **electoral matters** or when making other general enquiries. The register will also record the responses provided.

Any candidate may, upon request, obtain information about the recorded requests made by another candidate as recorded in the Information Request Register and a copy of information given in response to the request.

The Manager Governance may, at his or her discretion, automatically circulate to all candidates, the response to any request recorded in the Information Request Register.

12 Assistance to Candidates

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**.

12.1 Candidate Information

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

The Councillor Candidate Information Kit may include:

- Information about this policy;
- Information about nominating as a candidate;
- Information about other sources of information, including from the Victorian Electoral Commission and the Returning Officer; or
- Information about election campaign donation returns.