



# Election Period ‘Caretaker’ Policy

<b>Policy Owner</b>	Risk and Governance Unit Organisational Development
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Please check Council’s Intranet to ensure this is the latest Revision

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## **PURPOSE**

The Election Period ‘caretaker’ Policy has been developed in order to ensure that the general elections for the Mitchell Shire Council 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.

This Policy is prepared and endorsed in accordance with section 93B of the *Local Government Act 1989* (“the Act”).

This policy addresses the requirements of the Act regarding the responsibilities, actions and behaviours of the Council in the period leading up to a general election.

## **SCOPE**

The policy applies to Mitchell Shire Council, Councillors and Council Officers to ensure the ordinary business of Council continues in a responsible, transparent and legally-compliant manner in the period leading up to an election.

The policy applies only to the actual making of decisions by the Council during the “election period”. It does not apply to announcements of decisions by the Council prior to the commencement of the “election period”.

## **POLICY**

### **1. CARETAKER PERIOD**

The ‘caretaker’ period is taken to mean the “election period” as defined in Section 3 of the *Local Government Act 1989* and starts on the last day on which nominations for an election can be received and ends at 6.00pm on Election Day.

The “election period” for the 2016 Council general elections commences on Tuesday 20 September 2016 and ceases at 6.00pm on Election Day, Saturday 22 October 2016.

### **2. COUNCIL DECISION MAKING**

It is an established democratic principle that elected bodies should not unnecessarily bind an incoming government during an election period. The Council therefore commits to the principle that it will make every endeavour to avoid making significant decisions that bind an incoming Council.

This includes a commitment to comply with the requirements of section 93A of the Act relating to “major policy decisions”.

## 2.1 Major Policy Decisions

Section 93A of the Act prohibits the Council, a Special Committee or a person acting under delegation from the making of major policy decisions during an election period for a general election.

**‘Major Policy Decisions’** are defined in the *Local Government Act 1989* to be decisions:

- (a) Relating to the employment or remuneration of a Chief Executive Officer under section 94 of the Act, other than a decision to appoint an acting Chief Executive Officer;
- (b) To terminate the appointment of a Chief Executive Officer under section 94 of the Act;
- (c) To enter into a contract the total value of which exceeds whichever is the greater of \$100,000 or 1% of the Council's revenue from rates and charges levied under section 158 of the Act in the preceding financial year; and
- (d) To exercise any power under section 193 of the Act 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 of the Act in the preceding financial year.

**For the purposes of the 2016 election period, 1% of revenue from rates and charges of the adopted 2016/2017 budget.**

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 will, by resolution, request an exemption from the Minister for Local Government, in accordance with section 93A(2) of the Act.

## 2.2 Significant Decisions

In addition to major policy decisions as defined, other decisions may be controversial.

The Council will avoid making decisions during an election period that are of a significant nature and which would unnecessarily bind an incoming Council, unless the matter under consideration is Urgent and cannot be deferred without

having a negative impact on the Council, the municipality or the local community.

The Council will avoid the following decision types unless absolutely necessary for council operational purposes or pursuant to a statutory requirement:

1. Allocation of community grants or other direct funding to community organisations;
2. Significant planning scheme amendments;
3. Significant planning permit approvals, or planning permit approvals that present a costs risk to Council;
4. Changes to strategic objectives and strategies in Council Plan.

### 3. ELECTORAL MATTER

The Council will ensure that it complies with section 55D of the Act which requires that a Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during an election period unless it only contains information about the election process.

In accordance with the Act, **any** advertisement, handbill, pamphlet or notice to be printed, published or distributed during the election period will be certified, in writing, by the Chief Executive Officer.

The power and duty to certify an advertisement, handbill, pamphlet or notice will not be delegated by the Chief Executive Officer.

#### Definitions

The following definitions from the Act are noted.

Section 3(1)        **'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.

Section 3(1)        **'Publish'** means publish by any means including by publication on the Internet.

Section 3(1A)      **'Electoral matter'** means 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.

- Section 3 (1B) 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—
- (a) the election; or
  - (b) a candidate in the election; or
  - (c) an issue submitted to, or otherwise before, the voters in connection with the election.

#### **4. MEDIA AND PUBLICITY**

Communications during an election period will continue to inform the community about Council services and activities but must not include any electoral matter.

To achieve this objective during an election period, all publications including:

- Newsletters, brochures and pamphlets
- Advertisements/advertorials
- Mail outs (including emails to multiple addresses)
- Website and social media
- Media releases

will be reviewed and scrutinised to ensure they do not contain electoral matter.

The Chief Executive Officer will have final sign-off on all media releases or campaigns.

Any communications which the Chief Executive Officer considers contain electoral matter, will be modified, suspended, or withdrawn from display and/or distribution during the election period.

Communications which are cleared to be printed, published or distributed during the election period will be certified in writing by the Chief Executive Officer.

##### **4.1 Social Media**

Any publication on Council’s social media sites during the election period must be certified by the Chief Executive Officer.

Council officers responsible for administering Council’s social media sites will monitor these sites during the “caretaker” period and use moderation features where these are available, to ensure that no electoral matter is posted on these sites.

## 5. DISCRETIONARY FUNDS

The Council will not make any decisions relating to requests for funding to community, business, sponsorship and/or tourism organisation or individual during the “caretaker” period.

## 6. COUNCILLORS

These *provisions* do not restrict the ability of Councillors to issue media releases or make media comment **in their own name and using their own resources**.

Councillors must be careful not to breach the requirements of section 55D of the Act in relation to electoral advertisements, handbills, pamphlet or notices during the election period. Councillors must also be careful not to breach section 76D in relation to improper use of public resources. Serious penalties apply.

There are also a number of other prohibitions in relation to how a candidate conducts himself/herself during an election campaign and again penalties apply. The majority of these are covered in sections 52 to 62B of the *Local Government Act 1989*.

## 7. COUNCIL RESOURCES

It is an established democratic principle that public resources must not be used in a way that would influence the way people vote in elections, except in regard to supporting the actual election process. The Council therefore commits to the principle that it will ensure that Council resources are not used inappropriately during an election period.

Any staff member who considers that a particular use of Council resources may influence voting in the election must obtain approval as outlined in this policy before authorising, using or allocating the resource.

### 7.1 Events, Activities and Support Services

In applying this principle, the following will be normal practice during an election period for a general election:

- Public events will only be organised by Council staff if they are part of the normal services or operation of the Council and the scheduling of the event during the election period is deemed to be appropriate.
- Public consultation will only be organised by Council staff if it is part of the normal services or operation of the Council and is a legislative requirement.

- Speeches for Councillors will only be prepared by Council staff in relation to events that are part of the normal services or operation of the Council and such speeches will not be circulated or available for publication.
- Media services, including media releases, will not be provided for individual Councillors by Council staff during the election period.
- Council staff will ensure that action on requests for service will continue to be based on established methods of setting priorities and from existing budget allocations.

## **7.2 Equipment, Stationery and Facilities**

In accordance with current Council policy and practice, Council resources, including office and hospitality facilities, support staff, equipment/services, merchandise and stationery are provided or made available to Councillors for normal Council business and are therefore not to be used in connection with any electoral activities.

Council logos or letterheads, Mitchell Shire Council branding or Council provided photographs will not be used by Councillors in any way that relates to an election.

Similarly, Council funded telephone (mobile or landline) numbers and email addresses are not to be used by Councillors as contact points in their election campaign material.

Reimbursement of Councillors' out-of-pocket expenses during an election period will apply only to costs that have been incurred in the performance of *duties as a Councillor* as defined and not for expenses that could be perceived as supporting or connected with a candidate's election campaign.

## **8. INFORMATION**

### **8.1 Council Business**

As Councillors must continue to perform their elected role during an election period, they will, as a matter of course, receive all necessary information for them to fulfil that role. Information to be provided to Councillors will include:

- Information that is publicly and freely available – Council Plans, Annual Reports, strategies, policies and the like.
- Information and advice provided by Council staff, as part of Council and Committee meeting agendas.

- Briefing Papers in relation to matters to be decided upon at forthcoming Council meetings. It is likely that the briefing information provided to Councillors during an election period will be of a more routine nature than normal, given the approach to decision making during the election period.

## 8.2 Requests for Information

All requests received by Council staff for information about Council projects, programs or services, will be responded to in a 'business as usual' manner. This means up to date responses will be provided about progress on Council projects or services to councillors, candidates and members of the community.

A 'business as usual' approach does not include extensive research or analysis involving significant Council resources or providing a level of information which would not normally be available.

Requests for information which require significant resources to be devoted to making a response or which might be perceived to support an election campaign will be referred to the Chief Executive Officer for consideration.

All election related enquiries from candidates or prospective candidates will be referred to the Returning Officer appointed to conduct the election.

Applications for information under Freedom of Information legislation will be dealt with in the normal manner.

## DEFINITIONS

### *Caretaker period*

Has the same meaning as 'election period' in section 3(1) of the Act, and means the period that starts on the entitlement date and ends at 6.00pm on Election Day.

### *Publication*

Includes any means of publication including letters and information on the Internet.

### *Public consultation*

Means a process that 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.

### *Significant decision*

Means an irrevocable decision that significantly affects the municipality.

### *Significant planning applications:*

- Developments with an estimated value >\$1 million (excluding dwellings)

- Multi-dwelling developments comprising more than 10 dwellings
- Subdivision of more than 10 vacant lots (excluding subdivision of approved or built developments)
- Events such as music festivals
- Uses with potential for amenity impacts (such as gun clubs/ranges, quarries, intensive/extensive animal husbandry or agricultural uses to name a few)

## **RELATED DOCUMENTS**

- *Local Government Act 1989*

## **MONITORING AND REVIEW**

In accordance with section 93B(2b), Council will continue to maintain the election period policy by reviewing and, if required, amending the policy not later than 12 months before the commencement of each subsequent general election period.