



Mildura Rural City Council

## Election Period (Caretaker) Policy

### Policy – CP037

Prepared	Reviewed	Approved	Date	Council Minute No.
Manager Corporate Administration	Executive Leadership Team	Council	24 March 2016	2016/0055
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#### 1. The purpose of this policy is

- To outline the procedures to be applied by Council during the election (caretaker) period for a General Council Election.
- To achieve greater consistency and rigour in Council procedures and reduce ambiguity and confusion surrounding caretaker arrangements.
- To govern the actions of Council and Councillors during the election (caretaker) period prior to the 2016 General Council Election.
- To ensure that the ordinary business of Council continues throughout the election (caretaker) period in a responsible and transparent manner.
- To ensure that the ongoing ordinary business of Council is kept separate from Councillor's activities which relate to the election.

#### 2. Policy Statement

At the date of adoption of this policy, the election (caretaker) period is a 32-day period prior to the Election Day on 22 October 2016, being 20 September 2016.

It is an established democratic principle that during an election period, elected bodies must not make decisions that may bind an incoming government. Council therefore commits to the principle that it will make every endeavour to avoid making decisions that inappropriately bind the incoming Council. This includes a commitment to comply with the requirements of Section 93A of the *Local Government Act 1989* (the Act) relating to "Major Policy Decisions", and "Significant Decisions".

### **3. Principles**

#### **3.1 Preventing inappropriate decisions**

##### **3.1.1 Major Policy Decisions**

Section 93A of the Act prohibits the making of “Major Policy Decisions” during the election (caretaker) period. Major Policy decisions are defined by the Act as decisions:

- (a) Relating to the employment or remuneration of the 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 contracts the total value of which exceeds whichever is the greater of
  - \$100,000 or such higher amount as may be fixed by Order in Council under section 186(1) of the Act; or
  - 1% of the Council’s revenue from rates and charges levied under section 158 in the preceding financial year
- (d) To exercise any power under section 193 of the Act if the sum assessed under section 193(5A) in respect of the proposal exceed 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

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

##### **3.1.2 Significant Decisions**

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

Significant decisions include irrevocable decisions that:

- (a) Commit Council to substantial expenditure or significant actions;  
or
- (b) Will have a significant impact on the municipality or the community.

Council acknowledges that it has an ongoing responsibility to act in the best interests of the Community. Therefore, where a delay in making a significant decision would result in significant detriment to the local community or the broader community, Council may make an exception to this procedure. In making an exception to this procedure, Council will deal with the matter impartially having regard to the long-term interests of the community and as transparently as possible.

### **3.1.3 Caretaker Statement**

During the election (caretaker) period, the Chief Executive Officer will vet and ensure that a “Caretaker Statement” is included in every report submitted to Council or to a Special Committee of Council for a decision.

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

- “The recommended decision is not a “Major Policy Decision”, as defined in Section 93A of the *Local Government Act 1989*; or a “Significant Decision” within the meaning of the Election Period (Caretaker) policy”
- “The recommended decision is not a “Major Policy Decision” as defined in Section 93A of the *Local Government Act 1989*. The recommended decision is a “Significant Decision” within the meaning of the Election Period (Caretaker) Policy, but an exception should be made for the following reasons [insert reasons for making an exemption]”
- “The recommended decision is to seek an exemption from the Minister as the matter requires a “Major Policy Decision” within the meaning of Section 93A of the *Local Government Act 1989*”
- “The recommended decision is a “Major Policy Decision” as defined in Section 93A of the *Local Government Act 1989*, but an extraordinary circumstances exemption was granted by the Minister for Local Government on [insert date]”

Councillors undertake to refrain from moving motions or raising matters at a Council or Special Committee Meeting that could potentially influence voting at the General Council Election.

The following examples, although not limited to, are types of matters that will not be presented for a Council decision during the election (caretaker) period:

- Allocation of community grants or other direct funding to community organisations
- Major Planning Scheme Amendments
- Changes to strategic objectives and strategies in the Council Plan

All decisions presented will be carefully considered and only presented if absolutely necessary for Council operational purposes or pursuant to a statutory requirement.

### **3.2 Preventing misuse of resources**

It is an established democratic principle that public resources may be used to support the election process but must not be used in a matter that would influence the way people vote in elections.

Council commits to the principle that it will ensure Council resources are not used inappropriately during the election period. This includes a commitment to comply with the following procedures in addition to the requirements of Section 55D of the Act.

#### **3.2.1 Electoral Matter**

Council will ensure that it complies with Section 55D of the Act which provides that a Council will not print, publish or distribute or cause, permit or authorise to be printed, published or distributed any electoral advertisement, handbill, pamphlet or notice during the election (caretaker) period unless it only contains information about the election process.

#### **3.2.2 Other Resources**

Council will also ensure other resources of Council are not used inappropriately in ways that may influence voting in an election or provide an undue advantage for a candidate. This includes financial, human and material resources.

Council understands that the following will be normal practice during an election (caretaker) period:

- Public events will only be organised and run by Council administration if they are part of the normal services or operation of Council
- Speeches for Councillors will only be prepared by Council staff in relation to events that are part of the normal services or operation of Council and such speeches will not be circulated or available for publication
- Media services, including media releases, will not be provided for Councillors by the administration during the election (caretaker) period
- Councillor newsletters will not be resourced by Council in any way during the election (caretaker) period
- Neither the Council logo nor Council stationery will be used by Councillors in any way that relates to the election
- The provisions of this policy also extend to Council's social media activities during the election (caretaker) period.
- Councillors must ensure that inappropriate use of Council resource or reference to Council is avoided within their personal social media activities during the election (caretaker) period

In addition, equipment and facilities provided to Councillors for the purpose of conducting normal Council business will not be used for campaigning purposes.

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, Councillors will reimburse Council for usage of those services during the election (caretaker) period that exceeds average usage levels over the past two years.

### **3.3 Limiting public consultation and the scheduling of Council events**

Consultation is an integral part of Council's policy development process and operations. Council will ensure that during the election period public consultation or Council events will be kept to a minimum and only arranged if they are an integral part of the normal services or operations of Council. These events will be organised by Council administration.

All public consultation or events during the election (caretaker) period require approval by the CEO. This approval must include the special circumstances making it necessary and how the risk of influencing the election will be mitigated or prevented.

### **3.4 Equitable access to Council information**

By virtue of their position, Councillors have access to a wide range of information not freely available to other candidates. During the election (caretaker) period, Councillor candidates will be treated in the same way as other candidates with respect to access of Council held information.

Councillors will still be able to access Council held documents so long as they are necessary for them to perform their current role and functions.

Further, during the election (caretaker) period, all documents sought by and made available to any candidate will be made available to all candidates.

A register will be maintained with all documents provided to candidates.

### **3.5 Misuse of position**

Section 76D of the Act outlines Councillor requirements in relation to ensuring that Councillors do not misuse their position, this continues to be of high importance during the election (caretaker) period. All Councillors undertake to not misuse their position:

- (a) To gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
- (b) To cause, or attempt to cause, detriment to the Council or another person

#### **4. Who is responsible for implementing this policy?**

Manager Corporate Administration.

#### **5. Definitions**

Election (Caretaker) period	Starts on the last day on which nominations for that election can be received; and  Ends at 6pm on election day
Executive Leadership Team (ELT)	Management Team consisting of: <ul style="list-style-type: none"><li>• Chief Executive Officer</li><li>• General Manager Community</li><li>• General Manager Corporate</li><li>• General Manager Development</li></ul>
Inappropriate decisions	Decisions that would affect voting in an election; or  Decisions that could reasonably be made after the election
Major Policy Decisions	As defined in section 93A of the Act
Significant Decision	Decisions that commit Council to substantial expenditure or significant actions; or  Decisions that will have a significant impact on the municipality or the community

#### **6. Legislation and other references**

##### **6.1 Legislation**

For further information related to this policy see:

- The *Local Government Act 1989*

##### **6.2 Documents**

This Policy is implemented in conjunction with the following documents:

- Councillor Code of Conduct

### 6.3 Risk Assessment Reference

*Please tick the corporate risk(s) that this policy is addressing.*

Risk Category	✓	Risk Category	✓
Asset Management Committees	✓	Financial Sustainability	
Compliance – Legal & Regulatory	✓	Human Resource Management	✓
Contract Management		Leadership & Organisational Culture	
Contract Tendering & Procurement	✓	Occupational Health & Safety	
Corporate Governance		Organisational Risk Management	✓
Environmental Sustainability		Project Management	
		Public Image and Reputation	✓