

Election Period Policy (Caretaker Policy) and Voting Method

Council

Presenter: Director Governance, Marlo Emmitt

26 November 2019

Purpose and background

1. To seek Council endorsement of an Election Period Policy (refer Attachment 2) that defines appropriate procedures and practices in the lead up to the 2020 Melbourne City Council elections. The Policy is often referred to as the 'Caretaker Policy'.
2. 'Caretaker' provisions are intended to assure the community that councils and councillors will not use public resources in election campaigning or make major policy decisions that may bind the incoming council. Specific provisions apply to all councils during the election period. The provisions will apply from 23 September 2020 until 6pm on Election Day (24 October 2020), inclusive.
3. In accordance with the *Local Government Act 1989* (Act), following the council election in 2016 a council must continue to maintain the election period policy, review it, and if required, amend the policy not later than 12 months before the commencement of each subsequent general election period.
4. Management delayed the formal review by Council of the Policy anticipating that the *Local Government Bill 2019* (Bill) would be enacted. However, the Bill was only introduced into Parliament on 13 November 2019.

Key issues

5. The Act places two significant legislative restrictions on Council's operations during the election period relating to decision making and printing, publishing or distributing documents containing 'electoral matter'.
6. The Act prohibits Council, a special committee of Council or a person acting under delegation by the Council from making 'major policy decisions' or 'inappropriate decisions' during the election period. Major policy decisions and inappropriate decisions are defined in the Act and attached policy (refer Attachment 2).
7. Electoral matter is broadly defined as any 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 office for the purpose of conducting the election*'. The Act prohibits Council from printing, publishing or distributing certain publications containing electoral matter during the election period, including by another person or body on behalf of Council unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer.
8. While management does not consider significant changes to the current Election Period Policy are required, it is recommended the Policy include reference to:
 - 8.1. suspending livestreaming of Future Melbourne Committee meetings during the election period
 - 8.2. postponing the release of audio recordings of Council/Committee meetings until after Election Day
9. The Policy has also been amended to update the purpose, applicable dates and branch/officer titles.
10. Pursuant to section 41A(2A) of the Act, voting at a general election must be conducted by the same means, whether attendance or postal, as the previous general election was conducted, unless the Council has decided at least eight months before election day to change the means of conducting the voting. As the 2016 Melbourne City Council (MCC) elections were conducted by postal voting, the method of voting for the 2020 MCC elections will be via postal voting unless Council resolves otherwise.

Recommendation from management

11. That Council:
 - 11.1. Adopts the Election Period Policy (Caretaker Policy) as contained in Attachment 3 to the report from management.
 - 11.2. Authorises the Director Governance to make any minor editorial changes to the Election Period Policy.
 - 11.3. Notes that the method of voting for the 2020 Melbourne City Council elections will be via postal voting unless Council resolves otherwise.

Attachments:

1. Supporting Attachment
2. 2016 Election Period Policy (showing recommended changes)
3. Revised Election Period Policy (with changes incorporated)

Supporting Attachment

Legal

1. The report accurately identifies the relevant statutory provisions.
2. While the Act states that that the election period starts on the last day nominations for the election can be received (22 September 2016), section 44(1) of the *Interpretation of Legislation Act 1984* provides that, 'where in an Act or subordinate instrument a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall not be included in the period'.
3. Pursuant to section 41A(2A) of the Act, voting at a general election must be conducted by the same means, whether attendance or postal, as the previous general election was conducted, unless the Council has decided at least eight months before election day to change the means of conducting the voting. As the 2016 MCC elections were conducted by postal voting, the method of voting for the 2020 MCC elections will be via postal voting unless Council resolves otherwise.

Finance

4. There are no financial implications arising from the recommendation contained in this report.

Conflict of interest

5. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

Health and Safety

6. In developing this proposal, no Health and Safety issues or opportunities have been identified.

Stakeholder consultation

7. No external consultation has been undertaken as the election period is governed by legislation.

Environmental sustainability

8. There is no significant sustainability impact arising from the recommendation in this report.



Election Period Policy (Caretaker Policy)

Adopted by Melbourne City Council on ~~23 February 2016~~

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* All references to Councillors should be read as including the Lord Mayor and Deputy Lord Mayor.

* Except for section 8 of the Policy, all references to Chief Executive Officer (CEO) should read as including the Chief Executive's nominee/delegate.

1. Purpose

The Election Period Policy (Caretaker Policy) has been developed in order to ensure that the general elections for the Melbourne City Council (to be held on Saturday 24² October 20²⁰¹⁶¹) and subsequent elections are conducted in a manner that is ethical, fair and equitable and are publicly perceived as such.

An important part of City of Melbourne integrity is that all employees need to remain impartial at all times.

During the lead up to (not just during the election period) employees need to maintain impartiality by avoiding making any comment or expressing an opinion, in any context which is public or may become public, in relation to candidates, potential candidates or policy debates.

This is particularly the case where employees are identified as a City of Melbourne employee or representing City of Melbourne in the public arena. Social media use of this kind also requires extreme caution and judgement.

Employees also need to avoid working on any task that could be seen to relate to the candidates for the election or to any role that current Councillors may play in the election, particularly when representing the City of Melbourne.

2. What is this policy designed to achieve?

This policy applies during an 'election period' (refer below for definition) to cover:

- decisions that are made by Council, a special committee or a person acting under delegation by the Council
- any material that is published by the Council or on Council's behalf
- protocols for Council and Committee meetings
- public consultations
- attendance and participation in functions and events
- the use of Council resources
- access to Council information
- media and media services.

3. Election period

During an election period, local government goes into 'caretaker' mode, avoiding actions and decisions which could be seen to be influencing voters or which will have a significant impact on the incoming Council.

The *Local Government Act 1989* (Act) provides that the election period commences on the last day on which nominations for that election can be received and ends at 6pm on Election Day.

For the 2016 elections, 'caretaker' provisions will apply from 23⁴ September 20²⁰¹⁶ until 6pm on 24² October 20²⁰¹⁶, inclusive.

¹ The Melbourne City Council will be conducting its elections by postal ballot.
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4. Why is a policy required?

The Act requires councils to have an election period policy to explain to their communities how they will conduct their business immediately prior to an election. This is to ensure council elections are not compromised by inappropriate electioneering by existing councillors and to safeguard the authority of the incoming council. The policy also provides guidance at an operational level to ensure compliance with legislative requirements, demonstrates the Council's commitment to probity in its elections and ensures transparency and accountability of the Council, Councillors and staff during the election period.

5. Operation of policy

This policy applies during the election period, which:

- **commences** on the ~~23~~ September 20~~20~~~~16~~ and
- **concludes** at 6pm on Election Day (~~24~~ October 20~~20~~~~16~~).

6. Decisions during the election period

Council, a special committee of Council or a person acting under delegation given by the Council must not make 'major policy decisions' or 'inappropriate decisions' during the election period for a general election.

6.1. Major policy decisions

Provisions under section 93A of the Act prohibit Council from making 'major policy decisions' during the election period. A **major policy decision** is defined in the Act as meaning any of the following:

Major policy decisions
Employment or remuneration of a Chief Executive Officer (CEO) under section 94, other than a decision to appoint an acting CEO.
Terminating the appointment of a CEO under section 94.
Entering into a contract with a total value exceeding either \$100,000 or such higher amount as may be fixed by Order in Council under section 186(1); or 1% of Council's revenue from rates and charges levied under section 158 in the preceding financial year (estimated at \$2.3 million), whichever is the greater.
Exercising any power under section 193 of the Act (entrepreneurial powers) where the sum assessed under section 193(5A) in respect of the proposal exceeds either \$100,000 or 1% of Council's revenue from rates and charges levied under section 158 in the preceding financial year (estimated at \$ 2.993 million), whichever is the greater.

6.1.1. Scheduling consideration of major policy decisions

Unless 'extraordinary circumstances' apply the CEO will ensure that major policy decisions are either:

- considered by Council **prior** to the election period, or
- scheduled for determination by the **incoming** Council.

6.1.2. Extraordinary circumstances

If Council considers there are extraordinary circumstances that require a major policy decision to be made during the election period, Council may (after consulting with Local Government Victoria) apply in writing to the Minister for Local Government for an exemption.

6.2. Inappropriate decisions

Inappropriate decisions are defined as meaning:

Inappropriate decisions
Decisions that would affect voting in an election.
Decisions that may unreasonably bind an incoming council and could reasonably be made after the election.

6.2.1. Inappropriate decisions that will be avoided

The following inappropriate decisions (whether made by Council, a Council special Committee or a staff member with delegated authority) will be avoided completely during the election period:

- allocation of community grants or other direct funding to community organisations
- allocation of discretionary funding
- major planning scheme amendments
- sale or discontinuance of roads etc
- changes to strategic objectives and strategies in the Council Plan.

6.3. Considerations for officers with delegated authority

Before making any decisions under delegated authority during the election period, officers should consider the following:

- whether the decision is 'significant'
- the urgency of the issue (that is, can it wait until after the election?)
- the possibility of financial repercussions if it is deferred
- whether the decision is likely to be controversial
- the best interests of Council.

Officers requiring assistance in determining whether a decision is likely to be inappropriate should seek advice from the [Director/Manager Governance and Legal](#) in the first instance.

7. Council and Committee meetings

The following protocols will apply for Council and Committee meetings during the election period.

7.1. Audio recordings of Council and Committee meetings

While Council and Committee agenda papers and minutes are considered to be part of normal Council business (and do not require certification by the CEO), audio recordings of these meetings are not. As such, audio recordings of meetings which take place during the election period will not be made available on Council's website until after the election period has ended.

7.2. Livestreaming of Future Melbourne Committee meetings

Livestreaming of Future Melbourne Committee meetings will cease during the election period.

7.1-7.3. Public question time

Council will suspend public question time at all Future Melbourne Committee ~~(Committee)~~ meetings during the election period. Members of the public will still be able to make written submissions and/or address the Committee meeting in relation to items listed on the agenda.

7.2-7.4. Election period statement in reports

All reports to Council and Committee will be assessed by the CEO, in accordance with the Act and this policy, and if approved, will include an election period policy statement.

7.3-7.5. Notices of motion by Councillors

All Notices of Motion by Councillors will be assessed by the CEO, in accordance with the Act and this policy, and if admitted on the agenda, will include an election period policy statement.

8. Council publications during the election period

8.1. Prohibition on publishing materials during the election period

The Act imposes limitations on Council publications during the election period to ensure Council does not publish material containing electoral matter that may influence, or be seen to influence, people's voting decisions.

It is prohibited under s 55D of the Act for Council:

- to print, publish or distribute, or
- to cause, permit or authorise other to print, publish or distribute on behalf of the Council, any advertisement, handbill, pamphlet or notice that contains 'electoral matter' during the election period.

Electoral matter is defined in the Act 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 returning officer for the purpose of conducting an election.*'

Publication should be read broadly to include electronic information and web based productions.

A publication is taken to contain electoral matter if it contains an express or implicit reference to, or comment on:

- the election
- a candidate in the election
- an issue submitted to, or otherwise before, the voters in connection with the election.

Some examples include publishing material which:

- sets out the strengths or weaknesses of a candidate
- advocates the policies of the Council or a candidate
- responds to claims made by a candidate
- sets out the achievements of the elected Council or Councillor

The controls do not cover electoral material produced by, or on behalf of, the Returning Officer for the purposes of conducting an election or advertisements/posts which simply announce the holding of a meeting or the election process itself.

8.2. Certification of Council publications by Chief Executive Officer

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 anyone acting for the Council.

The certification process is to apply to any documents produced for the purpose of communicating with people in the community. This may mean some material requires certification before the commencement of the election period in order for it to be issued/disseminated during the election period (eg Melbourne magazine).

The CEO's certification must be in writing and importantly, cannot be delegated to another person.

In the first instance, all material will be submitted to the Governance ~~and Legal~~ branch (within a time frame to be determined) for vetting. If deemed relevant, Governance ~~and Legal~~ will then forward the material to the CEO for certification.

Staff will be notified by return email once CEO certification has been provided (all effort will be made to ensure certification is provided in line with specified deadlines).

All certified material will bear the following affixation and be signed and dated by the CEO:

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

All documentation in relation to the certification process will be retained on Council records.

Material that may be affected includes, but is not limited to:

- new material on Council websites
- social media publications
- Council newsletters, brochures, flyers and magazines
- material available in libraries and Council offices
- media releases
- public speeches
- brochures on service/facilities
- advertisements (including job advertisements)
- Council newspapers
- mail outs to multiple addresses
- material publicising a function or event.

8.3. Considerations for CEO in granting publication approval

In considering whether to grant approval for the publication of material during the election period, in accordance with the provisions in the Act, the CEO:

- **Must not permit** any materials to be published which include reference to the following:
 - a candidate in the election
 - a current Councillor
 - an issue before the voters in connection with the election.
- **May approve** publication of material which only contains information about:
 - the election process itself
 - Council information that does not include any reference to a current Councillor or candidate
- **Must not delegate** to a member of Council staff, the power to permit any materials to be published in the election period.

8.4. Publication of Council and Committee agenda papers and minutes

Council and Committee agenda papers and minutes are considered to be part of normal Council business and do not require certification by the CEO, unless a wider than normal distribution is anticipated.

8.5. Council Annual Report

Due to the publication date of the 2019-2020 Annual Report occurring during the election period, it is affected by the legislative restrictions on publications and therefore information about Councillors will be restricted to what is required by the *Local Government (Planning and Reporting) Regulations 2014*, a photograph of the Councillor, and membership of special committees and other bodies to which they have been appointed by the Council.

The 2019-2020 Annual Report will not contain a Foreword from the Lord Mayor.

8.6. Council websites

During the election period Council's websites will not contain material which contravenes this policy. Any references to the election will only relate to the election process.

Councillor profiles will be removed and information about Councillors will be restricted to:

- names
- photographs
- contact details
- titles
- membership of special committees and other bodies to which they have been appointed by the Council.

8.7. General Council publications

Information about Councillors will be restricted in City of Melbourne publications (such as Melbourne magazine), consistent with paragraph 8.6 above.

8.8. Social Media

Social media includes, but is not limited to:

- Facebook
- Twitter
- YouTube
- Flickr
- LinkedIn
- Pinterest

In accordance with paragraph 8.2, any publications on social media sites under the auspices of Council during the election period require certification by the CEO, prior to publication. This may mean messages and/or responses to questions may not be posted as quickly as normal.

Protocols have been developed for managing Council's corporate social media and online channels.

While ~~the Public Corporate~~ Affairs and ~~Media Strategic Marketing~~ branch will monitor the mainstream platforms, any staff member who manages a social media or online channel as part of their role with the City of Melbourne is required to apply the same protocols.

9. Public consultations

9.1. Prohibition

It is prohibited under this policy for public consultation to be undertaken during the election period (either new consultation or existing) on an issue which is contentious, unless prior approval is given by the CEO.

For the purposes of this section, 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.

The requirements of this section do not apply to public consultation required under the *Planning and Environment Act 1987*, or matters subject to section 223 of the Act.

9.2. Approval for public consultations

Due to the prohibition in section 9.1, it is prudent for the Council not to commission or approve any public consultation if such consultation is likely to run into the election period, unless prior approval is given by the CEO.

Where public consultation is approved to occur during the election period the results of that consultation will not be reported to Council until after the election period, except where approved by the CEO.

10. Attendance at functions and events during the election period

In this part, reference to events and functions means gatherings of internal and external stakeholders to discuss, review, acknowledge, communicate, celebrate or promote a program, strategy or issue which is of relevance to the Council and its community and may take the form of conferences, workshops, forums, launches, promotional activities, social occasions such as dinners, receptions and balls.

10.1. Public events staged by external bodies

Councillors may continue to attend events and functions during the election period.

10.2. Council events and functions

Council organised events and functions held during the election period will be reduced to only those essential to the operation of the Council.

10.3. Speeches and keynote addresses

Councillors must not give speeches or keynote addresses at Council organised or sponsored events and functions during the election period.

Councillors may make short welcome speeches at Council organised or sponsored events and functions during the election period, subject to prior approval and certification from the CEO.

10.4. Publication of promotional material

In preparing any material concerning a Council organised or sponsored function or event which will be published or distributed during the election period, such preparation must be consistent with the controls under section 8 of this policy.

11. Council resources

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. Council staff must avoid assisting Councillors in ways that could create a perception that they are being used for electoral purposes. In any circumstances where the use of Council resources might be construed as being related to a candidate's election campaign, advice will be sought from the CEO.

11.1. Correspondence

General correspondence (including email) addressed to Councillors will be answered as usual. However, Councillors will only respond to the necessary minimum correspondence during the election period and correspondence in respect to significant, sensitive or controversial matters should be responded to by the CEO. Replies will be prepared so as to protect Council staff from perceptions of political bias.

11.2. Use of Council equipment and services by Councillors

Councillors may continue to use any Council equipment and services provided to them to facilitate their performance of normal Council duties in line with the *Councillor Expenses and Resources Guidelines*. When using Council supplied equipment and services during the election period, Councillors should avoid incurring costs to Council which are, or may be perceived to be, for election related purposes.

11.3. Expenses incurred by Councillors

Reimbursement of expenses and costs incurred by Councillors during the election period must only relate to the conduct of normal Council duties and not electoral purposes.

Councillors will be required to make a declaration that any expenses incurred accord with this policy, when:

- making a claim for out-of-pocket expenses
- making requests for Council payment for services
- reviewing and certifying expense accounts for Council supplied services.

11.4. Council branding and stationery

No Council logos, letterheads, or other City of Melbourne branding will be used for, or linked in any way, to a candidate's election campaign.

11.5. Support to the Lord Mayor, Deputy Lord Mayor and Councillors

No staff, including support staff for the Lord Mayor, Deputy Lord Mayor and Councillors must be asked to undertake any tasks connected directly or indirectly with an election campaign.

11.6. Forums

No community or portfolio themed forums will be held by Councillors during the election period.

11.7. Councillor photographs

Councillors are not permitted to use photos or images taken by, or provided by Council, for the purposes of their election campaign (including photographs appearing on Council websites).

12. Access to Council information

Councillors will continue to be provided with information to enable them to perform their current role and function as a Councillor. Where practicable and not prohibited by legislation, information made available to one or more candidates will be made available to all and posted on Council's website.

Any requests for information that are deemed to be for election purposes are to be referred to the Governance and Legal branch for determination and dissemination to all candidates, if appropriate.

13. Media and media services

Council's media services are intended to promote Council activity or initiatives and must not be used in any way that might favour a candidate.

13.1. Media advice

Any requests for media advice or assistance from Councillors during the election period will be channelled through the CEO. No media advice or assistance will be provided in relation to election issues or in regard to publicity that involves specific Councillors.

13.2. Media releases/spokespersons

Media releases will not refer to specific Councillors. Where it is necessary to identify a spokesperson in relation to an issue, the CEO will determine the appropriate person.

13.3. Publicity campaigns

During the election period, publicity campaigns, other than for the purpose of conducting the election will be avoided wherever possible. Where a publicity campaign is deemed necessary for a Council activity, it must be approved by the CEO. In any event, Council publicity during the election period will be restricted to communicating normal Council activities and initiatives and will not involve specific Councillors.

13.4. Councillors

Councillors will not use their position as an elected representative or their access to Council staff and other Council resources to gain media attention in support of an election campaign.

13.5. Council employees

During the election period no Council employee may make any public statement that relates to an election issue unless statements have been approved by the CEO.

14. Misuse of position

Section 76D of the Act prohibits current or former Councillors or members of special committees from using their position to gain access to information or resources that would otherwise not be available.

The Act specifies the following circumstances as a misuse of position:

- making improper use of information acquired as a result of the position he or she held or holds
- disclosing information that is confidential information within the meaning of section 77(2) of the Act
- directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E
- exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform
- using public funds or resources in a manner that is improper or unauthorised
- failing to disclose a conflict of interest.

15. Equity in assistance to candidates

The Council affirms that all candidates for the Council election will be treated equally.

15.1. Candidate assistance and advice

Any assistance and advice to be provided to candidates as part of the conduct of the Council election will be provided equally to all candidates.

15.2. Election process enquiries

All election process 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 [Director Manager Governance and Legal](#).

16. Suspension of matters during election period

In accordance with the Act, any applications made, or proceedings before a Councillor Conduct Panel or the Victorian Civil and Administrative Tribunal regarding the misconduct or serious misconduct of a person who is a councillor, must be suspended during the election period.

17. Breach of policy

Any breach of this policy relating to staff conduct is to be referred to the Chief Executive Officer.

Alleged breaches relating to all other matters are to be referred to the Local Government Investigations and Compliance Inspectorate at [email address inspectorate@lgi.vic.gov.au](mailto:inspectorate@lgi.vic.gov.au) or [phone 1800 469 359](tel:1800469359).

~~[www.dpcd.vic.au/inspectorate-or-\(03\)-9665-9555](http://www.dpcd.vic.au/inspectorate-or-(03)-9665-9555)~~.

18. Revision date

In accordance with the requirements of the Act and following the general election on ~~24~~ October 20~~20~~16, this policy will be maintained and reviewed by Council not later than 12 months before the commencement of each subsequent general election period.



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Adopted by Melbourne City Council on []

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An important part of City of Melbourne integrity is that all employees need to remain impartial at all times.

During the lead up to (not just during the election period) employees need to maintain impartiality by avoiding making any comment or expressing an opinion, in any context which is public or may become public, in relation to candidates, potential candidates or policy debates.

This is particularly the case where employees are identified as a City of Melbourne employee or representing City of Melbourne in the public arena. Social media use of this kind also requires extreme caution and judgement.

Employees also need to avoid working on any task that could be seen to relate to the candidates for the election or to any role that current Councillors may play in the election, particularly when representing the City of Melbourne.

2. What is this policy designed to achieve?

This policy applies during an 'election period' (refer below for definition) to cover:

- decisions that are made by Council, a special committee or a person acting under delegation by the Council
- any material that is published by the Council or on Council's behalf
- protocols for Council and Committee meetings
- public consultations
- attendance and participation in functions and events
- the use of Council resources
- access to Council information
- media and media services.

3. Election period

During an election period, local government goes into 'caretaker' mode, avoiding actions and decisions which could be seen to be influencing voters or which will have a significant impact on the incoming Council.

The *Local Government Act 1989* (Act) provides that the election period commences on the last day on which nominations for that election can be received and ends at 6pm on Election Day.

For the 2016 elections, 'caretaker' provisions will apply from 23 September 2020 until 6pm on 24 October 2020, inclusive.

¹ The Melbourne City Council will be conducting its elections by postal ballot.

4. Why is a policy required?

The Act requires councils to have an election period policy to explain to their communities how they will conduct their business immediately prior to an election. This is to ensure council elections are not compromised by inappropriate electioneering by existing councillors and to safeguard the authority of the incoming council. The policy also provides guidance at an operational level to ensure compliance with legislative requirements, demonstrates the Council's commitment to probity in its elections and ensures transparency and accountability of the Council, Councillors and staff during the election period.

5. Operation of policy

This policy applies during the election period, which:

- **commences** on the 23 September 2020 and
- **concludes** at 6pm on Election Day (24 October 2020).

6. Decisions during the election period

Council, a special committee of Council or a person acting under delegation given by the Council must not make 'major policy decisions' or 'inappropriate decisions' during the election period for a general election.

6.1. Major policy decisions

Provisions under section 93A of the Act prohibit Council from making 'major policy decisions' during the election period. A **major policy decision** is defined in the Act as meaning any of the following:

Major policy decisions
Employment or remuneration of a Chief Executive Officer (CEO) under section 94, other than a decision to appoint an acting CEO.
Terminating the appointment of a CEO under section 94.
Entering into a contract with a total value exceeding either \$100,000 or such higher amount as may be fixed by Order in Council under section 186(1); or 1% of Council's revenue from rates and charges levied under section 158 in the preceding financial year (estimated at \$2.3 million), whichever is the greater.
Exercising any power under section 193 of the Act (entrepreneurial powers) where the sum assessed under section 193(5A) in respect of the proposal exceeds either \$100,000 or 1% of Council's revenue from rates and charges levied under section 158 in the preceding financial year (estimated at \$2.99 million), whichever is the greater.

6.1.1. Scheduling consideration of major policy decisions

Unless 'extraordinary circumstances' apply the CEO will ensure that major policy decisions are either:

- considered by Council **prior** to the election period, or
- scheduled for determination by the **incoming** Council.

6.1.2. Extraordinary circumstances

If Council considers there are extraordinary circumstances that require a major policy decision to be made during the election period, Council may (after consulting with Local Government Victoria) apply in writing to the Minister for Local Government for an exemption.

6.2. Inappropriate decisions

Inappropriate decisions are defined as meaning:

Inappropriate decisions
Decisions that would affect voting in an election.
Decisions that may unreasonably bind an incoming council and could reasonably be made after the election.

6.2.1. Inappropriate decisions that will be avoided

The following inappropriate decisions (whether made by Council, a Council special Committee or a staff member with delegated authority) will be avoided completely during the election period:

- allocation of community grants or other direct funding to community organisations
- allocation of discretionary funding
- major planning scheme amendments
- sale or discontinuance of roads etc
- changes to strategic objectives and strategies in the Council Plan.

6.3. Considerations for officers with delegated authority

Before making any decisions under delegated authority during the election period, officers should consider the following:

- whether the decision is 'significant'
- the urgency of the issue (that is, can it wait until after the election?)
- the possibility of financial repercussions if it is deferred
- whether the decision is likely to be controversial
- the best interests of Council.

Officers requiring assistance in determining whether a decision is likely to be inappropriate should seek advice from the Director Governance in the first instance.

7. Council and Committee meetings

The following protocols will apply for Council and Committee meetings during the election period.

7.1. Audio recordings of Council and Committee meetings

While Council and Committee agenda papers and minutes are considered to be part of normal Council business (and do not require certification by the CEO), audio recordings of these meetings are not. As such, audio recordings of meetings which take place during the election period will not be made available on Council's website until after the election period has ended.

7.2. Livestreaming of Future Melbourne Committee meetings

Livestreaming of Future Melbourne Committee meetings will cease during the election period.

7.3. Public question time

Council will suspend public question time at all Future Melbourne Committee meetings during the election period. Members of the public will still be able to make written submissions and/or address the Committee meeting in relation to items listed on the agenda.

7.4. Election period statement in reports

All reports to Council and Committee will be assessed by the CEO, in accordance with the Act and this policy, and if approved, will include an election period policy statement.

7.5. Notices of motion by Councillors

All Notices of Motion by Councillors will be assessed by the CEO, in accordance with the Act and this policy, and if admitted on the agenda, will include an election period policy statement.

8. Council publications during the election period

8.1. Prohibition on publishing materials during the election period

The Act imposes limitations on Council publications during the election period to ensure Council does not publish material containing electoral matter that may influence, or be seen to influence, people's voting decisions.

It is prohibited under s 55D of the Act for Council:

- to print, publish or distribute, or
- to cause, permit or authorise other to print, publish or distribute on behalf of the Council, any advertisement, handbill, pamphlet or notice that contains 'electoral matter' during the election period.

Electoral matter is defined in the Act 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 returning officer for the purpose of conducting an election.*'

Publication should be read broadly to include electronic information and web based productions.

A publication is taken to contain electoral matter if it contains an express or implicit reference to, or comment on:

- the election
- a candidate in the election
- an issue submitted to, or otherwise before, the voters in connection with the election.

Some examples include publishing material which:

- sets out the strengths or weaknesses of a candidate
- advocates the policies of the Council or a candidate
- responds to claims made by a candidate
- sets out the achievements of the elected Council or Councillor

The controls do not cover electoral material produced by, or on behalf of, the Returning Officer for the purposes of conducting an election or advertisements/posts which simply announce the holding of a meeting or the election process itself.

8.2. Certification of Council publications by Chief Executive Officer

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 anyone acting for the Council.

The certification process is to apply to any documents produced for the purpose of communicating with people in the community. This may mean some material requires certification before the commencement of the election period in order for it to be issued/disseminated during the election period (eg Melbourne magazine).

The CEO's certification must be in writing and importantly, cannot be delegated to another person.

In the first instance, all material will be submitted to the Governance branch (within a time frame to be determined) for vetting. If deemed relevant, Governance will then forward the material to the CEO for certification.

Staff will be notified by return email once CEO certification has been provided (all effort will be made to ensure certification is provided in line with specified deadlines).

All certified material will bear the following affixation and be signed and dated by the CEO:

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

All documentation in relation to the certification process will be retained on Council records.

Material that may be affected includes, but is not limited to:

- new material on Council websites
- social media publications
- Council newsletters, brochures, flyers and magazines
- material available in libraries and Council offices
- media releases
- public speeches
- brochures on service/facilities
- advertisements (including job advertisements)
- Council newspapers
- mail outs to multiple addresses
- material publicising a function or event.

8.3. Considerations for CEO in granting publication approval

In considering whether to grant approval for the publication of material during the election period, in accordance with the provisions in the Act, the CEO:

- **Must not permit** any materials to be published which include reference to the following:
 - a candidate in the election
 - a current Councillor
 - an issue before the voters in connection with the election.
- **May approve** publication of material which only contains information about:
 - the election process itself
 - Council information that does not include any reference to a current Councillor or candidate
- **Must not delegate** to a member of Council staff, the power to permit any materials to be published in the election period.

8.4. Publication of Council and Committee agenda papers and minutes

Council and Committee agenda papers and minutes are considered to be part of normal Council business and do not require certification by the CEO, unless a wider than normal distribution is anticipated.

8.5. Council Annual Report

Due to the publication date of the 2019-20 Annual Report occurring during the election period, it is affected by the legislative restrictions on publications and therefore information about Councillors will be restricted to what is required by the *Local Government (Planning and Reporting) Regulations 2014*, a photograph of the Councillor, and membership of special committees and other bodies to which they have been appointed by the Council.

The 2019-20 Annual Report will not contain a Foreword from the Lord Mayor.

8.6. Council websites

During the election period Council's websites will not contain material which contravenes this policy. Any references to the election will only relate to the election process.

Councillor profiles will be removed and information about Councillors will be restricted to:

- names
- photographs
- contact details
- titles
- membership of special committees and other bodies to which they have been appointed by the Council.

8.7. General Council publications

Information about Councillors will be restricted in City of Melbourne publications (such as Melbourne magazine), consistent with paragraph 8.6 above.

8.8. Social Media

Social media includes, but is not limited to:

- Facebook
- Twitter
- YouTube
- Flickr
- LinkedIn
- Pinterest

In accordance with paragraph 8.2, any publications on social media sites under the auspices of Council during the election period require certification by the CEO, prior to publication. This may mean messages and/or responses to questions may not be posted as quickly as normal.

Protocols have been developed for managing Council's corporate social media and online channels.

While the Public Affairs and Media branch will monitor the mainstream platforms, any staff member who manages a social media or online channel as part of their role with the City of Melbourne is required to apply the same protocols.

9. Public consultations

9.1. Prohibition

It is prohibited under this policy for public consultation to be undertaken during the election period (either new consultation or existing) on an issue which is contentious, unless prior approval is given by the CEO.

For the purposes of this section, 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.

The requirements of this section do not apply to public consultation required under the *Planning and Environment Act 1987*, or matters subject to section 223 of the Act.

9.2. Approval for public consultations

Due to the prohibition in section 9.1, it is prudent for the Council not to commission or approve any public consultation if such consultation is likely to run into the election period, unless prior approval is given by the CEO.

Where public consultation is approved to occur during the election period the results of that consultation will not be reported to Council until after the election period, except where approved by the CEO.

10. Attendance at functions and events during the election period

In this part, reference to events and functions means gatherings of internal and external stakeholders to discuss, review, acknowledge, communicate, celebrate or promote a program, strategy or issue which is of relevance to the Council and its community and may take the form of conferences, workshops, forums, launches, promotional activities, social occasions such as dinners, receptions and balls.

10.1. Public events staged by external bodies

Councillors may continue to attend events and functions during the election period.

10.2. Council events and functions

Council organised events and functions held during the election period will be reduced to only those essential to the operation of the Council.

10.3. Speeches and keynote addresses

Councillors must not give speeches or keynote addresses at Council organised or sponsored events and functions during the election period.

Councillors may make short welcome speeches at Council organised or sponsored events and functions during the election period, subject to prior approval and certification from the CEO.

10.4. Publication of promotional material

In preparing any material concerning a Council organised or sponsored function or event which will be published or distributed during the election period, such preparation must be consistent with the controls under section 8 of this policy.

11. Council resources

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. Council staff must avoid assisting Councillors in ways that could create a perception that they are being used for electoral purposes. In any circumstances where the use of Council resources might be construed as being related to a candidate's election campaign, advice will be sought from the CEO.

11.1. Correspondence

General correspondence (including email) addressed to Councillors will be answered as usual. However, Councillors will only respond to the necessary minimum correspondence during the election period and correspondence in respect to significant, sensitive or controversial matters should be responded to by the CEO. Replies will be prepared so as to protect Council staff from perceptions of political bias.

11.2. Use of Council equipment and services by Councillors

Councillors may continue to use any Council equipment and services provided to them to facilitate their performance of normal Council duties in line with the *Councillor Expenses and Resources Guidelines*. When using Council supplied equipment and services during the election period, Councillors should avoid incurring costs to Council which are, or may be perceived to be, for election related purposes.

11.3. Expenses incurred by Councillors

Reimbursement of expenses and costs incurred by Councillors during the election period must only relate to the conduct of normal Council duties and not electoral purposes.

Councillors will be required to make a declaration that any expenses incurred accord with this policy, when:

- making a claim for out-of-pocket expenses
- making requests for Council payment for services
- reviewing and certifying expense accounts for Council supplied services.

11.4. Council branding and stationery

No Council logos, letterheads, or other City of Melbourne branding will be used for, or linked in any way, to a candidate's election campaign.

11.5. Support to the Lord Mayor, Deputy Lord Mayor and Councillors

No staff, including support staff for the Lord Mayor, Deputy Lord Mayor and Councillors must be asked to undertake any tasks connected directly or indirectly with an election campaign.

11.6. Forums

No community or portfolio themed forums will be held by Councillors during the election period.

11.7. Councillor photographs

Councillors are not permitted to use photos or images taken by, or provided by Council, for the purposes of their election campaign (including photographs appearing on Council websites).

12. Access to Council information

Councillors will continue to be provided with information to enable them to perform their current role and function as a Councillor. Where practicable and not prohibited by legislation, information made available to one or more candidates will be made available to all and posted on Council's website.

Any requests for information that are deemed to be for election purposes are to be referred to the Governance branch for determination and dissemination to all candidates, if appropriate.

13. Media and media services

Council's media services are intended to promote Council activity or initiatives and must not be used in any way that might favour a candidate.

13.1. Media advice

Any requests for media advice or assistance from Councillors during the election period will be channelled through the CEO. No media advice or assistance will be provided in relation to election issues or in regard to publicity that involves specific Councillors.

13.2. Media releases/spokespersons

Media releases will not refer to specific Councillors. Where it is necessary to identify a spokesperson in relation to an issue, the CEO will determine the appropriate person.

13.3. Publicity campaigns

During the election period, publicity campaigns, other than for the purpose of conducting the election will be avoided wherever possible. Where a publicity campaign is deemed necessary for a Council activity, it must be approved by the CEO. In any event, Council publicity during the election period will be restricted to communicating normal Council activities and initiatives and will not involve specific Councillors.

13.4. Councillors

Councillors will not use their position as an elected representative or their access to Council staff and other Council resources to gain media attention in support of an election campaign.

13.5. Council employees

During the election period no Council employee may make any public statement that relates to an election issue unless statements have been approved by the CEO.

14. Misuse of position

Section 76D of the Act prohibits current or former Councillors or members of special committees from using their position to gain access to information or resources that would otherwise not be available.

The Act specifies the following circumstances as a misuse of position:

- making improper use of information acquired as a result of the position he or she held or holds
- disclosing information that is confidential information within the meaning of section 77(2) of the Act
- directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E
- exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform
- using public funds or resources in a manner that is improper or unauthorised
- failing to disclose a conflict of interest.

15. Equity in assistance to candidates

The Council affirms that all candidates for the Council election will be treated equally.

15.1. Candidate assistance and advice

Any assistance and advice to be provided to candidates as part of the conduct of the Council election will be provided equally to all candidates.

15.2. Election process enquiries

All election process 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 Director Governance.

16. Suspension of matters during election period

In accordance with the Act, any applications made, or proceedings before a Councillor Conduct Panel or the Victorian Civil and Administrative Tribunal regarding the misconduct or serious misconduct of a person who is a councillor, must be suspended during the election period.

17. Breach of policy

Any breach of this policy relating to staff conduct is to be referred to the Chief Executive Officer.

Alleged breaches relating to all other matters are to be referred to the Local Government Investigations and Compliance Inspectorate at email address inspectorate@lgi.vic.gov.au or phone 1800 469 359.

18. Revision date

In accordance with the requirements of the Act and following the general election on 24 October 2020, this policy will be maintained and reviewed by Council not later than 12 months before the commencement of each subsequent general election period.