

CP 21 Election Period Policy

Responsible Officer:	Chief Executive Officer
Document Type:	Council Policy
Reference:	CP 21
Adopted by Council:	26 June 2024
Date of Next Review:	June 2028

Policy Scope

INTRODUCTION

The Election Period Policy has been developed to ensure transparency, good governance and accountability are adhered to by Councillors and officers so that general elections held for Benalla Rural City Council are conducted in a manner that is ethical, fair and equitable and are publicly perceived as such.

In addition to supporting probity and confidence in the election process, observance of the election period is a statutory requirement. The *Local Government Act 2020* (the Act) governs municipal elections and requires the Council to prepare, adopt and maintain an Election Period Policy in relation to procedures to be applied by the Council during the period leading up to a general election. The statutory requirements are minimum governance standards.

The policy will assure the community that Benalla Rural City Council will not use public resources in election campaigning or make major decisions that may bind the incoming council, while continuing to function on behalf of the community.

Policy Objective

- To ensure the highest standard of good governance is achieved by the incumbent Council and all Council staff.
- To supplement the requirements of the Act with additional measures to ensure that best practice is achieved in supporting the fair and unbiased conduct of general elections.
- To ensure that Council elections are conducted in an environment that is open and fair to all candidates by outlining: the use of council resources, council publications, functions and events, requests for information, liaison with the media and Councillor expenditure in the lead up to an election.
- To recognise that the incumbent Council will require support, information and resources to fulfil its role as elected representatives of the community within the confines of this policy.

Policy Legislation

This policy should be read in conjunction with the Act, particularly the following sections-

3.1 Section 69: Governance Rules to include election period policy

1. A Council must include an election period policy in its Governance Rules.
2. An election period policy must prohibit any Council decision during the election period for a general election that—
 - a. relates to the appointment or remuneration of the Chief Executive Officer but not to the appointment or remuneration of an Acting Chief Executive Officer; or
 - b. commits the Council to expenditure exceeding one per cent of the Council's income from general rates, municipal charges and service rates and charges in the preceding financial year; or
 - c. the Council considers could be reasonably deferred until the next Council is in place; or
 - d. the Council considers should not be made during an election period.
3. An election period policy must prohibit any Council decision during the election period for a general election or a by-election that would enable the use of Council's resources in a way that is intended to influence, or is likely to influence, voting at the election.
4. A Council decision made in contravention of subsection (2)(a) or (b) is invalid.
5. Any person who suffers any loss or damage as a result of acting in good faith on a Council decision that is invalid by virtue of subsection (4) is entitled to compensation from the Council for that loss or damage.

3.2 Section 123: Misuse of position

1. A person who is, or has been, a Councillor or member of a delegated committee must not intentionally 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.

Penalty: 600 penalty units or imprisonment for 5 years.

2. An offence against subsection (1) is an indictable offence.
3. For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a delegated committee include—
 - a. making improper use of information acquired as a result of the position the person held or holds; or
 - b. disclosing information that is confidential information; or
 - c. directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff; or
 - d. exercising or performing, or purporting to exercise or perform, a power, duty or function that the person is not authorised to exercise or perform; or
 - e. using public funds or resources in a manner that is improper or unauthorised; or
 - f. participating in a decision on a matter in which the person has a conflict of interest.

4. This section—
 - a. has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of delegated committees; and
 - b. does not prevent the institution of any criminal or civil proceedings in respect of that liability.

3.3 Section 124: Directing a member of Council staff

A Councillor must not intentionally direct, or seek to direct, a member of Council staff—

- a. in the exercise of a delegated power, or the performance of a delegated duty or function, of the Council; or
- b. in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or
- c. in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under this Act or any other Act; or
- d. in relation to advice provided to the Council or a delegated committee, including advice in a report to the Council or delegated committee.

Penalty:120 penalty units.

3.4 Section 304: Prohibition on Councillor or member of Council staff

1. A Councillor or member of Council staff must not use Council resources in a way that—
 - a. is intended to; or
 - b. is likely to—

affect the result of an election under this Act.

Penalty:60 penalty units.

2. A Councillor or member of Council staff must not use Council resources to intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed any electoral material during the election period on behalf of, or purporting to be on behalf of, the Council unless the electoral material only contains information about the election process or is otherwise required in accordance with, or under, any Act or regulation.

Penalty:60 penalty units.

Definitions

Where terms used in this policy are defined in the Act, their use in this policy is consistent with the definitions in the Act.

Definitions used in this policy which are not defined by the Act are:

Terms	Definitions
Chief Executive Officer	Chief Executive Officer of Benalla Rural City including their delegate.
Councillors	Councillors including the Mayor.

Terms	Definitions
Council Resources	Council stationery, motor vehicles, telephones, computers, office equipment, Council staff and contractors.
Election Period	<p>During the 'Election Period' for a Municipal General Election the council will be deemed to be in 'Caretaker Mode'. The election 'caretaker' period is defined by section 3(1) of the Act to commence at the time that nominations close on nomination day, and ends at 6pm on the election day.</p> <p>Therefore, the election period for the 2024 elections commences at noon on Tuesday, September 17, 2024 and ends at 6pm on Saturday, October 26, 2024.</p>
Electoral Matter	<p>Electoral matter as defined by the Act 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 election manager for the purposes of conducting an election". Further the Act stipulates that "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> <ol style="list-style-type: none"> 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. d. advocates the policies of the Council or of a candidate e. refers to matters that are known to be contentious in the community and likely to be the subject of election debate.
Event or Function	Any planned gathering or social occasion organised or sponsored by Benalla Rural City.
Major Policy Decision	Any decision relating to the employment or remuneration of the Chief Executive Officer, entering into a contract or proposal, the total value of which is the greater of \$100,000 or one percent of the Council's revenue from rates and charges levied under section 158 of the Local Government Act 1989 in the preceding financial year, the allocation of community grants, major planning scheme amendments, or significant changes to Council plans or budget, decisions which would unreasonably bind an incoming Council.
Publication	Includes any means of publication including letters and information on the Internet and social media.
Public and Community Consultation	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. It does not include providing a statutory notice relating to planning permit applications or other decisions.
Significant Policy Decision	A decision which would bind an incoming Council that either relates to the commitment of substantial expenditure or action or a decision which affects the municipality and community that cannot be reversed.

Application

WHO THE POLICY APPLIES TO

Councillors must comply with the policy, regardless of whether they intend to nominate or have already nominated as candidates for election.

Staff and Delegated Committee members must act in accordance with this policy during the election period.

Council committee members who are candidates for election are expected to comply with this policy and in addition:

- a. submit apologies for any committee meetings or other activities held during the election period.
- b. return any council equipment, documents or information which is not available to the public for the duration of the election period.
- c. immediately resign from the committee upon election.

Other candidates for election are expected to comply with the obligations of this policy where they apply.

Prior to the election period the Chief Executive Officer will ensure that all members of Council staff are advised in regard to the application and scope of the caretaker procedures.

WHAT ACTIVITIES THE POLICY COVERS

The policy applies during an election period to cover:

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

THE POLICY COMMITS THE COUNCIL TO

- avoid making significant new policies or decisions that could unreasonably bind an incoming Council.
- avoid making inappropriate decisions or using resources inappropriately.
- rescheduling the release of publications and communications where possible. Any publications and communications must be checked and certified by the Chief Executive Officer to ensure they do not contain any electoral matter before being released.
- ensuring that public resources, including staff time, are not used in election campaigning or in a way that may improperly influence the result of an election or advantage existing Councillors as candidates.
- ensuring that information held by the Council is made equally available and accessible to all candidates during the election.

Policy

This policy replaces and overrides any previous policy or document that refers to the Caretaker period.

During the election period, the business of council must continue and ordinary matters of administration must continue to be addressed.

The Council is committed to fair and democratic elections, and commits to comply with the restrictions, limitations and controls described in this policy to ensure that all candidates seeking election to council are treated fairly and equitably.

PROHIBITED DECISIONS

In accordance with section 69(2) of the Act the council is prohibited from making a decision during an election period for a general election that:

- a. relates to the appointment or remuneration of the Chief Executive Officer but not to the appointment or remuneration of an Acting Chief Executive Officer; or
- b. commits the council to expenditure exceeding one per cent of the council's income from general rates, municipal charges and service rates and charges in the preceding financial year; or
- c. the council considers could be reasonably deferred until the next council is in place; or
- d. the council considers should not be made during an election period.

In accordance with section 69(3) of the Act the council is prohibited from making a decision during an election period for a general election or a by-election that would enable the use of council's resources in a way that is intended to influence, or is likely to influence, voting at the election.

The following decisions will not be made during an Election Period:

- Approval of contracts that require significant funding in future financial years or are regarded as politically sensitive.
- Decisions that have significant impacts on the council's income or expenditure or that relate to expenditure on politically sensitive matters.
- Allocation of community grants or other direct funding to community organisations.
- Major planning scheme amendments. Sale or discontinuance of roads, etc.
- Decisions of a politically sensitive nature.
- Setting advocacy positions.
- Policy or strategy decisions.

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 decision, the Chief Executive Officer, or delegate, may make an application to the Minister for a compliance exemption in accordance with section 177 of the Act.

CARETAKER STATEMENT

During the election period, the Chief Executive Officer will ensure that a Caretaker Statement is included in every report submitted to the council or to a delegated committee of council for a decision.

The Caretaker Statement will specify one or more of the following.

- a. The recommended decision is not a decision prohibited by the Act and is a decision that falls within the guidance of the Election Period Policy.
- b. The recommended decision is outside the guidance of the Election Period Policy, but the following negative consequences of a failure to make a decision on this matter outweigh the consequences of binding an incoming council. [Insert description of negative consequences of failure to make decision].
- c. The recommended decision is a decision prohibited in the Act during an election period, but compliance exemption was sought from the Minister in accordance with section 177 of the Act and was granted by on [insert date].

During the election period, the council will not make a decision on any matter or report that does not include one of these Caretaker Statements.

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

The agenda for council meetings held during the election period will make no provision for question time, notices of motion, and general business.

COUNCIL RESOURCES

1. It is an established democratic principle that public resources must not be used in a manner that would influence the way people vote in elections. The Council commits to this principle in that it will ensure Council resources are not used inappropriately during a Council election.
2. In accordance with section 304 of the Act, the Council will ensure that probity is observed in the use of all Council resources during the election period and Council staff are required to exercise appropriate discretion to ensure compliance with section 304 of the Act. In any circumstances where the use of Council resources might be construed as being related to a candidate's election campaign, advice must be sought from the Chief Executive Officer or the General Manager Corporate and Community.
3. In determining whether the use of Council resources during the election period is appropriate, officers will have regard to whether these same resources are available to other candidates at the election.
4. Council resources, including (but not limited to) offices, meeting rooms, officers, hospitality services, photographs, equipment, Council funded telephone numbers, iPads, motor vehicles and email addresses and stationery will be used exclusively for normal Council business during the election period and will not be used in connection with any election campaign.

5. Reimbursements of candidates' out-of-pocket expenses during the election period will only apply to costs that have been incurred in the performance of normal Council duties, and not for expenses that could be perceived as supporting or being connected with a candidate's election campaign. In the case of Councillor claims that cover a combination of Council and electoral business, the Chief Executive Officer may approve a partial reimbursement to cover Council activities.
6. Council logos, publications, letterheads, or other Benalla Rural City branding are not to be used for, or linked in any way to, a candidate's election campaign.
7. Council staff will not be asked to undertake any tasks connected directly or indirectly with the election campaign of a Councillor standing for re-election.
8. Officers will not provide candidates with access to databases, contact lists, property counts, email addresses or any other information that would assist in mailing or other distribution of election material.

Photos or images taken by or provided by the Council are not to be used by Councillors for the purposes of electioneering or in support of their election campaign. This includes photos or images provided by the Council for past Council activities. This applies equally to images on the Council website that may be able to be copied.

COUNCIL INFORMATION

1. The Council affirms that all candidates for the Council election will be treated equally.
2. For the purposes of this Policy any Councillor – whether standing for re-election or not – will be regarded as a candidate.
3. Requests for information to staff from Councillors or candidates will be referred to the GMC or CEO and recorded as a Councillor Request.
4. 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.
5. Briefing material prepared by staff for Councillors during the caretaker period will relate only to factual matters or to existing Council services to assist Councillors in conducting normal day to day activities. Such information will not relate to policy development, new projects or matters that are the subject of public or election debate or that might be perceived to be connected with a candidate's election campaign.
6. Responses to candidates' requests will be provided by the Chief Executive Officer or their delegate. Only information that can be reasonably accessed will be released.
7. Section 123 of the Act prescribes serious penalties (600 penalty units or imprisonment, or both) for any Councillor who inappropriately makes use of their position or information obtained in the role of Councillor, to gain an advantage.
8. Any Freedom of Information (FOI) applications lodged during the caretaker period on matters such as expenses, costs etc regarding current Councillors will be dealt with where possible outside of the caretaker period (the FOI Act specifies a 30-day period in providing a response to a FOI application).
9. An Information Request Register will be maintained by the Customer Service Centre staff. This register will be a public document (available for inspection and available on the Council's website) that records all requests for information of a non-election nature by all candidates and the responses given to those requests as well as the name of the candidate making the request and the date request is made.

COMMUNITY ENGAGEMENT AND PUBLIC CONSULTATION

Community Engagement of a limited kind normally associated with routine administration will only continue through the election period where it can be justified as necessary and not likely to influence the election. Significant community engagement on major strategy or policy issues will not occur, or if already commenced, should be discontinued during the election period.

Public consultation required under the *Planning and Environment Act 1987*, or matters subject to section 223 of the Act are not affected by this policy.

COUNCIL PUBLICATIONS

The Act specifically prohibits the Council publishing or distributing electoral matter thus providing fairness to all candidates by preventing elected representatives from receiving an advantage. The policy will assist the Council to meet these statutory obligations.

1. Section 304(2) of the Act prohibits Councillors or Council staff from using Council resources to intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed any electoral material during the election period.

This is to ensure that the Council does not use public funds that may influence or be seen to influence people's voting decisions.

2. Best practice recommended by Local Government Victoria – in line with State and Federal Governments – is where possible to limit the release of documents to those that are essential for the conduct of Council operations.
3. Section 304(2) of the Act refers specifically to 'electoral material'. Local Government Victoria suggests this can be broadly interpreted to refer to documents produced for the purpose of communicating with the community (including on the internet) and lists the following as examples:
 - Council newsletters
 - Advertisements and notices, except newspaper notices of meetings
 - Media releases
 - Leaflets and brochures
 - Mailouts to multiple addresses

The following examples are also included in this policy:

- Social media posts
- Council noticeboards
- New website material
- E-Newsletters
- Reports
- Material to publicise an event
- Publication and distribution of councillor speeches.

Review

This policy may be reviewed at any time by the Council to accommodate changes in legislation, regulations, policy gaps, new technology or systems, as well as remain consistent with industry best practice.

Related Policies

Benalla Rural City Council Plan 2021-2025

Benalla Rural City Community Plan 2016-2036

Related Legislation

Local Government Act 2020

Victorian Charter of Human Rights and Responsibilities Act 2006