

# ELECTION CARETAKER PERIOD POLICY

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<b>Policy Reference No.</b>	POL/163
<b>File No.</b>	HCC19/802
<b>Strategic Objective</b>	5.3 Provide responsible and transparent governance, services and infrastructure which responds to and supports community needs.
<b>Adopted by Council</b>	29 March 2016
<b>Re-Adopted</b>	28 October 2019
<b>Date for Review</b>	24 October 2023
<b>Responsible Officer</b>	Manager Governance
<b>Department</b>	Governance

## **1 POLICY STATEMENT**

Hume City Council is committed to the principle of fair and democratic elections and will therefore adopt the practices within this policy and relevant legislative requirements as outlined in the Local Government Act 1989 (also referred to as 'the Act').

## **2 PURPOSE**

- 2.1** The Election Caretaker Period Policy 2020 has been developed to ensure that the general elections of Hume City Council to be held on Saturday 24 October 2020 and subsequent elections are conducted in a manner that is ethical, fair and equitable and is publicly perceived as such.
- 2.2** This policy addresses the requirements as outlined in the *Local Government Act 1989* in relation to the caretaker period and activities that are impacted during this time including decision-making, council resources public consultation and events, information and communications.
- 2.3** This policy also addresses the requirements as outlined in the Local Government Act 1989 in relation to Councillor conduct and misuse of position during the caretaker period. In addition to this policy, Council reinforces the importance of adhering to these requirements through its Code of Conduct for Councillors, which is about adopting good governance and leadership practices when representing Council and in dealings with the community, council staff and other Councillors.

## **3 SCOPE**

This policy applies to Councillors, the Chief Executive Officer and Executive Management Team, the Senior Management Team and all Council staff.

## **4 OBJECTIVE**

- 4.1** The objective of this policy is to develop a clear understanding and agreement on procedures for Councillors and all staff in relation to the caretaker period.
- 4.2** The policy is in accordance with section 93B of the Local Government Act which states that a Council must prepare, adopt and maintain an election period policy in relation to procedures to be applied by Council during the election period for a general election.
- 4.3** Hume City Council has certain provisions in place before, during and after the election period (also known as the caretaker period) to ensure the orderly and proper conduct of the election process and to avoid actions and decisions that may be interpreted as influencing voters or binding an incoming Council.

## **5 POLICY IMPLEMENTATION**

The caretaker period commences 32 days before the election, when nominations close, and ends at 6pm on election day.

As such, the following policy actions must be complied with during the 2020 general election period, which will run from midnight on Tuesday 22 September 2020 to 6pm on Election Day, Saturday 24 October 2020.

## **5.1 Decision-making**

- 5.1.1** The Chief Executive Officer and Executive Management Team will assess all papers prepared for council or special committee meetings during the election period to ensure that no agenda item is included that could potentially influence voters' intentions at the forthcoming election or could encourage Councillor candidates to use the item as part of their electioneering.
- 5.1.2** Council will refrain from making major decisions such as (but not limited to) the allocation of community grants and other significant direct funding to community organisations, major planning scheme amendments and changes to strategic objectives and strategies in the council plan. Any other decision will be considered only if absolutely necessary for council operational purposes or pursuant to a statutory requirement.
- 5.1.3** Council will not make any decisions during the election period that will be binding on an incoming Council save for decisions which are part of the normal operating function of Council which includes most town planning matters.
- 5.1.4** In accordance with Section 93A of the Act, Council will not make any "Major Policy Decisions" during the election period. Major Policy Decisions are decisions:
- a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
  - b) to terminate the appointment of a Chief Executive Officer under section 94;
  - c) to enter into a contract the total value of which exceeds whichever is the greater of –
    - (i) \$100,000 or such higher amounts as may be fixed by Order in Council under section 186 (1); or
    - (ii) 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year;
  - 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 in the preceding financial year.
- 5.1.5** If 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.
- 5.1.6** Council will also not undertake a dispute resolution procedure if it is to occur during the caretaker period prior to a Council election.

## **5.2 Misuse of Council resources**

- 5.2.1** Council will ensure that Council resources are not used inappropriately during an election period in ways that may influence voting in an election or provide undue advantage for a candidate. 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 Chief Executive Officer.
- 5.2.2** Council Staff will not authorise, use or allocate a council resource for any purpose that may influence voting in the election, except where it only relates to the election process and is authorised by the Chief Executive Officer.
- 5.2.3** Council resources, including office or meeting facilities, support staff, hospitality services, equipment, stationery, printing, photographs/graphics/videos and branding, will be used exclusively for normal Council business during the election period and will not be used in connection with any election campaign or in a manner that may be construed as supporting an election campaign.
- 5.2.4** No Council logos, letterheads or other expressions of Hume City Council's brand (such as photographs/graphics, corporate colours, font and "H-symbol" key line) will be used for, or be linked in any way to, a candidate's election campaign.
- 5.2.5** Council resources, including office or meeting facilities, support staff, hospitality services, equipment, stationery, printing, photographs/graphics/videos and branding are not to be used in ways that may influence voting in an election or provide undue advantage for a candidate.
- 5.2.6** 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 Chief Executive Officer.
- 5.2.7** Reimbursements of Councillors' out-of-pocket expenses during the election period will only apply to costs that have been incurred in performance of normal duties as a Councillor and not for expenses that could be perceived as supporting or being connected with the election.
- 5.2.8** Equipment and facilities such as phones, laptops, facsimile machines, etc., provided to Councillors for the purpose of conducting normal Council business will not be used for campaigning purposes. Where it is impractical for Councillors to discontinue their use of these facilities during the election period, Councillors will reimburse Council for the usage of those services in accordance with *Council's Councillor Support and Expenses Entitlement Policy*.
- 5.2.9** Council email addresses, facsimile numbers and telephone numbers will not be used as contact points in campaign material.

- 5.2.10** The Chief Executive Officer or any staff should not be asked to undertake any tasks connected directly or indirectly with electioneering.

### **5.3 Misuse of position**

- 5.3.1** In accordance with Section 76D and 76E of the Act, a Councillor will not misuse or inappropriately make use of their position. A breach of section 76D attracts serious penalties including possible imprisonment (refer to attachment).

### **5.4 Public consultation**

- 5.4.1** In accordance with Section 93B of the Act, Council's election period policy must include limits on public consultation. For the purposes of this section of the policy, public consultation means a process which involves inviting (formally or informally) individuals, groups, organisations, businesses or the community generally to provide comment or feedback on an issue, proposed action, policy, plan or strategy of Council.
- 5.4.2** Public consultations will not continue or commence during the Election Period.
- 5.4.3** Prior to the commencement of the Election Period, public consultation which is likely to become contentious or politically sensitive during the course of the Election Period should be postponed where possible and practicable until after the election has been completed.
- 5.4.4** Any public consultations continuing into or commencing from Saturday 1 August 2020 to the commencement of the Election Period at midnight Tuesday 22 September 2020, requires approval from the Chief Executive Officer (CEO) and should avoid contentious or politically sensitive issues.
- 5.4.5** Where public consultation has occurred prior to the Election Period but a report on the consultation has not yet proceeded to a Council meeting, results of the consultation will also not be provided to Council until the Election Period has concluded.
- 5.4.6** Consultation for Permit Applications under the *Planning and Environment Act 1987* are exempt from this section of the Policy and can be conducted in accordance with statutory requirements.

### **5.5 Council events**

- 5.5.1** It is preferable that no Council-run events and functions are held during the election period. If any are proposed to be held during the election period, they must have prior approval from the Chief Executive Officer and be considered essential to the operation of Council.
- 5.5.2** Public events and functions during the election period will only be organised and run by Council's administration if they are part of Council's normal business activities. Officers will plan to avoid staging any functions, public events or the launch of publications during the election period. No election material or active

campaigning, including within the context of speeches by Councillors, is to be conducted at Council run and sponsored events.

- 5.5.3** Councillors can attend events and functions hosted by either Council or external parties during the election period. The Mayor can officially welcome guests at Council organised events and functions, however the Mayor and Councillors cannot give official speeches during the election period. During this time the Chief Executive Officer or Director is to give the speech. The speech should not contain any comment that could be considered as Council pushing an election issue and must be approved by the Chief Executive Officer or Manager Communications and Events. In addition, no copies of the speech are to be handed out to the community or media at the event.

## **5.6 Information**

- 5.6.1** Council affirms that all candidates for the Council election will be treated equally in terms of assistance and advice relating to the conduct of the Council election. All election related enquiries will be directed to the Returning Officer or, where the matter is outside the responsibilities of the Returning Officer, to the Chief Executive Officer.
- 5.6.2** Information and briefing material prepared by Council staff for Councillors during the election period will relate only to factual matters, existing Council services, or information that would normally be available to the public. All such requests for information or action are to be issued through the Executive Officer who will keep a record of requests made and advice provided.
- 5.6.3** No information will be provided which relates to new policy development, new projects or matters that are the subject of public or election debate or might be perceived to be connected with a candidate's election campaign.
- 5.6.4** All requests for information or action are to be issued through the offices of the responsible Council Director and the Executive Officer who will keep a record of requests made and advice provided. In the interests of ensuring equal access to all candidates, if information is sent to one candidate or Councillor, it should be sent to all.

## **5.7 Communication**

- 5.7.1** In accordance with Section 55D of the Act, Council will not print, publish or distribute or cause, permit or authorise to be printed published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless it has been certified in writing by the Chief Executive Officer.
- 5.7.2** The Chief Executive Officer will not certify a publication in either electronic or hard copy format that contains electoral matter. This includes social media activities and online/digital communications. Electoral matter is defined broadly as any matter which is intended, or likely to affect voting in an election.

It includes any material that refers to the election or candidates in the election or issues submitted to or otherwise before the voters in connection with the election. It excludes material produced for the purpose of conducting the election or informing the community about the election process.

## **6 DEFINITIONS AND ABBREVIATIONS**

**6.1** Election or Caretaker Period – refers to the time in which the activities of Council and Councillors are restricted as outlined in this policy. The 2020 election period will run from midnight on Tuesday 22 September to 6pm on Election Day, Saturday 24 October 2020.

**6.2** CEO – Chief Executive Officer

## **7 RELATED DOCUMENTS**

**7.1** Local Government Act 1989

**7.2** Hume City Council Code of Conduct for Councillors 2016

**7.3** Hume City Council Employee Code of Conduct

**7.4** Social Media Guidelines

**7.5** Use of Council's Internet, Email and Electronic Communications Policy

## **8 ATTACHMENT ONE**

**8.1** Relevant sections of the Local Government Act 1989

## **Attachment 1: Relevant sections of the Local Government Act 1989**

### **PART 3 - ELECTIONS**

#### **DIVISION 4 — HOLDING OF GENERAL ELECTIONS**

##### **31 General elections**

- (1) Subject to this Division, a general election of Councillors for all Councils must be held on the fourth Saturday in October 2012 and thereafter on the fourth Saturday in October in the fourth year after the last general election of Councillors for all Councils was held.

#### **DIVISION 4 — GENERAL PROVISIONS**

##### **55D Prohibition on Council**

- (1) A Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer.
- (1A) For the purposes of subsection (1), the publication of a document of a kind specified in that subsection does not include—
- (a) publication of any document published before the commencement of the election period; and
  - (b) publication of any document required to be published in accordance with, or under, any Act or regulation.

##### **Note**

See definitions of publish in section 3(1) and document in section 38 of the Interpretation of Legislation Act 1984.

- (2) The Chief Executive Officer must not intentionally or recklessly certify an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process.

Penalty: 60 penalty units.

- (3) Despite section 98(2), the Chief Executive Officer must not delegate the power to certify any advertisement, handbill, pamphlet or notice under this section to a member of Council staff.

- (4) A Councillor or member of Council staff must not intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during the election period on behalf of, or in the name of, the Council or on behalf of, or in the name of, a Councillor using Council resources if the electoral advertisement, handbill, pamphlet or notice has not been certified by the Chief Executive Officer under this section.

Penalty: 60 penalty units.



## **PART 4 – COUNCIL ADMINISTRATION**

### **DIVISION 1A – CONDUCT AND INTERESTS**

#### **76D Misuse of position**

- (1) A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position—
- (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or<sup>3</sup>
  - (b) to cause, or attempt to cause, detriment to the Council or another person.

Penalty: 600 penalty units or imprisonment for 5 years or both.

- (2) 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 special committee include—
- (a) making improper use of information acquired as a result of the position he or she held or holds; or
  - (b) disclosing information that is confidential information within the meaning of section 77(2); or
  - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
  - (d) 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; or
  - (e) using public funds or resources in a manner that is improper or unauthorised; or
  - (f) failing to disclose a conflict of interest as required under this Division.
- (3) 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 special committees; and
  - (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

#### **76E IMPROPER DIRECTION AND IMPROPER INFLUENCE**

- (2) A Councillor must not 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 another Act; or

(d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.

## **DIVISION 2 – PROCEDURE AND PROCEEDINGS**

### **93A Conduct of Council during election period**

- (1) Subject to this section, a Council, a special Committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.
- (2) If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.
- (3) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.
- (4) A major policy decision made in contravention of this section is invalid.
- (5) Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.
- (6) In this section, a major policy decision means any decision—
  - (a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
  - (b) to terminate the appointment of a Chief Executive Officer under section 94;
  - (c) to enter into a contract the total value of which exceeds whichever is the greater of—
    - (i) \$100 000 or such higher amount as may be fixed by Order in Council under section 186(1); or
    - (ii) 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year;
  - (d) to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year.

### **93B Council to adopt an election period policy**

- (1) A Council must prepare, adopt and maintain an election period policy in relation to procedures to be applied by Council during the election period for a general election.
- (2) A Council must prepare and adopt an election period policy as required by subsection (1)—
  - (a) by March 2016; and
  - (b) following the general election on 22 October 2016, 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.
- (3) An election period policy must include the following—
  - (a) procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the election period before a general election;
  - (b) limits on public consultation and the scheduling of Council events;
  - (c) procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.
- (4) A copy of the election period policy must—
  - (a) be given to each Councillor as soon as practicable after it is adopted; and
  - (b) be available for inspection by the public at the Council office and any district offices; and
  - (c) be published on the Council's Internet website maintained under section 82A.
- (5) In this section—

inappropriate decisions made by a Council during an election period includes any of the following—

  - (a) decisions that would affect voting in an election;
  - (b) decisions that could reasonably be made after the election.

## **DIVISION 3 – COUNCIL STAFF**

### **95 Conduct principles**

- (1) Council staff must in the course of their employment—
  - (a) act impartially;
  - (b) act with integrity including avoiding conflicts of interest;
  - (c) accept accountability for results;
  - (d) provide responsive service.

<b>Date Adopted</b>	29 March 2016
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<b>Review Date</b>	24 October 2023