

# 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>	24 August 2020
<b>Date for Review</b>	24 October 2021
<b>Responsible Officer</b>	Manager Strategic Communications
<b>Department</b>	Communications & Events

This Policy was adopted as part of the Governance Rules

# GOVERNANCE RULES

## Chapter 7 – Election Period Policy

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### **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 2020 (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 2020* 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 2020 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 69 of the Local Government Act 2020 which states that a Council must include an election period policy in its Governance Rules.
- 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.

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#### 5.1 Decision-making

- 5.1.1 As per the requirements of section 69(2) of the *Local Government Act 2020*, Council is prohibited from making any decisions 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.
- 5.1.2 As per the requirements of section 69(3) of the *Local Government Act 2020*, Council is prohibited from making any decisions 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.
- 5.1.3 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.
- 5.1.4 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.
- 5.1.5 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.
- 5.1.6 Applications and proceedings made and conducted under Division 7 of Part 6 of the *Local Government Act 2020*, being Councillor Conduct Panels and VCAT, must be suspended during the election period for a general election.

#### **Misuse of Council resources**

- 5.1.7 As per the requirements of section 304(1) of the *Local Government Act 2020*, a Councillor or member of Council staff must not use Council resources in a way that—

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a) is intended to; or

b) is likely to—

affect the result of an election under this Act.

- 5.1.8 As per the requirements of section 304(2) of the *Local Government Act 2020*, 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.
- 5.1.9 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.
- 5.1.10 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.
- 5.1.11 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.
- 5.1.12 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.
- 5.1.13 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.
- 5.1.14 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.
- 5.1.15 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.

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- 5.1.16 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 *Expenses Policy*.
- 5.1.17 Council email addresses, facsimile numbers and telephone numbers will not be used as contact points in campaign material.
- 5.1.18 The Chief Executive Officer or any staff should not be asked to undertake any tasks connected directly or indirectly with electioneering.

#### 5.2 Misuse of position

In accordance with Sections 123 and 124 of the Act, being Misuse of position and Directing a member of Council staff respectively, a Councillor will not intentionally misuse or intentionally direct, or seek to direct, a member of Council staff. A breach of either section attracts serious penalties including possible imprisonment (refer to Attachment 1).

#### 5.3 Public consultation

- 5.3.1 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.
- 5.3.2 Public consultations will not continue or commence during the Election Period.
- 5.3.3 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.
- 5.3.4 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.
- 5.3.5 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.
- 5.3.6 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.

#### 5.4 Council events

- 5.4.1 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

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period, they must have prior approval from the Chief Executive Officer and be considered essential to the operation of Council.

5.4.2 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.

5.4.3 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 Strategic Communications. In addition, no copies of the speech are to be handed out to the community or media at the event.

#### 5.5 Information

5.5.1 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.

5.5.2 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.

5.5.3 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.

5.5.4 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.

#### 5.6 Communication

5.6.1 Council will not print, publish or distribute or cause, permit or authorise to be printed published or distributed, any advertisement, handbill, pamphlet

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or notice during the election period unless it has been certified in writing by the Chief Executive Officer or their delegate

- 5.6.2 The Chief Executive Officer or their delegate 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**

Local Government Act 2020

Hume City Council Code of Conduct for Councillors 2016

Hume City Council Employee Code of Conduct

Social Media Guidelines

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

#### **8 ATTACHMENT ONE**

Relevant sections of the Local Government Act 2020

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**Attachment 1: Relevant sections of the *Local Government Act 2020***

**PART 3 – COUNCIL DECISION MAKING**

**Division 2 — Procedure and Proceedings**

**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.

Note - See section 59 in relation to a resolution of the Council

**PART 8 – ELECTORAL PROVISIONS**

**Division 4 — Holding of General Elections and By-Elections**

**257 General elections**

- (1) A general election of Councillors for all Councils must be held—
  - (a) on the fourth Saturday in October 2020; and
  - (b) thereafter on the fourth Saturday in October in the fourth year after the last general election of Councillors for all Councils was held.

**Division 9 — Electoral Offences**

**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—



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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.

#### **PART 6 – COUNCIL INTEGRITY**

##### **Division 1 — Improper Conduct**

##### **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 authorized 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.

##### **124 Directing a member of Council staff**

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

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- (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.