

CITY OF

BALLARAT



Caretaker Policy - Councillors

**G&IS – Gov – 01
Governance**

**BALLARAT CITY COUNCIL
Town Hall
Sturt St
Ballarat VIC 3350
Tel. 5320 5500**

TABLE OF CONTENTS

1	DOCUMENT CONTROL INFORMATION	2
2	POLICY STATEMENT	3
3	OWNER	3
4	APPLICABILITY	4
5	DEFINITIONS	4
6	PROCEDURE AND GUIDANCE NOTES.....	5
7	COMPLIANCE RESPONSIBILITIES	6
8	CHARTER OF HUMAN RIGHTS COMPLIANCE.....	8
9	REFERENCES AND RELATED POLICIES	8

1 DOCUMENT CONTROL INFORMATION

DOCUMENT CONTROL

Policy Name	Caretaker Policy - Councillors
Business Unit	Administration Services
File Location	DocHub
Document status	Approved
Version	2.00
Version Date	July 2010
Next Review date	July 2016

DOCUMENT HISTORY

	Version	Date	Author
Initial Draft	1	April 2012	Anthony Clifford
Second Draft	1	April 2012	Annie De Jong
Third Draft	1	May 2012	Anthony Clifford
Final Draft	2	July 2012	Annie De Jong
Approved	2	22 August 2012	Council R311/12

2 POLICY STATEMENT

Introduction:

In the lead up to an election the Local Government sector adopts a caretaker period to avoid actions and decisions that may be interpreted as influencing voters or binding an incoming Council.

There are specific caretaker provisions in the *Local Government Act 1989* (the Act) that Councils must implement during the caretaker period. These include limits on Council publications and prohibitions on certain types of decisions. (Refer sections 55D and 93A of the Act.)

Intent:

The purpose of the Caretaker Policy is to ensure that the ordinary business of local government in the City of Ballarat continues throughout the pre-election period in a responsible and transparent manner and in accordance with statutory requirements and established 'caretaker' practices.

This policy complements the commitments contained in the City of Ballarat Councillor Code of Conduct.

Objectives:

- To establish guidelines, protocols and practices that ensure that general elections for the Ballarat City Council to be held the last Saturday in October every 4 years and are conducted in a manner that is ethical, fair and equitable, and is publicly perceived as such.
- To ensure that public resources, including staff resources, are not used in election campaigning or in a way that may improperly influence the result of an election, or improperly advantage existing Councillors as candidates in the elections.

Statement:

1. The election period (or caretaker period) commences at midnight 32 days before the election date.
2. During the caretaker period the Council will be deemed to be in 'election caretaker mode'.
3. It is an established democratic principle that elected bodies should not unnecessarily bind an incoming government during the caretaker period. Council therefore commits to the principle that it will make every endeavour to avoid making decisions that inappropriately bind the incoming Council.

3 OWNER

The owner of this policy is the Chief Executive Officer.

All enquiries regarding this policy should be initially directed to Administration Services – Governance section.

4 APPLICABILITY

This policy applies to all current Councillors for City of Ballarat elections.

5 DEFINITIONS

The Act: Local Government Act 1989

Regulations: Local Government Regulations 2004

Caretaker Period: The election period (or caretaker period) commencing at midnight Tuesday September 25, 2012 and continuing until 6 pm Saturday October 27, 2012. A period of 32 days.

Major Policy Decisions: In the context of this policy, a ‘Major Policy’ decision as defined in section 93A (6) of the Act 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 \$100,000 {or such higher amount as may be fixed by Order in Council under section 186(1)} or 1% of the Council’s revenue from rates and charges levied under section 158 in the preceding financial year and
- (d) To exercise any power under section 193 - entrepreneurial powers - of the sum assessed in respect of the proposal exceeds whichever is the greater of \$100,000 or 1% of the Council’s revenue from rates in the preceding financial year.

Significant Decisions: Other decisions during the caretaker period that are of a significant nature and which would unnecessarily bind an incoming Council. These include:

- (a) Irrevocable decisions that commit the Council to substantial expenditure or significant actions; and
- (b) Irrevocable decisions that will have a significant impact on the municipality or the community.

Public Consultation: 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 or proposed action or proposed policy, and includes discussion of that matter with the public.

6 PROCEDURE AND GUIDANCE NOTES

6.1 Decision- Making

Council commits to the principle that it will make every endeavour to avoid making decisions that inappropriately bind the incoming Council.

This includes a commitment to not only comply with the requirements of section 93A of the Act, relating to “Major Policy Decisions”, but as well as with the items within this policy relating to “Significant Decisions”.

In the context of this policy, a ‘Major Policy’ decision as defined in section 93A (6) of the Act 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 \$100,000 {or such higher amount as may be fixed by Order in Council under section 186(1)} or 1% of the Council’s revenue from rates and charges levied under section 158 in the preceding financial year and
- (d) to exercise any power under section 193 - entrepreneurial powers - of the sum assessed in respect of the proposal exceeds whichever is the greater of \$100,000 or 1% of the Council’s revenue from rates in the preceding financial year.

If Council considers that there are extraordinary circumstances where the Ballarat and wider community would be significantly disadvantaged by the Council not making a particular major policy decision, the Council will, by resolution, request an exemption from the Minister for Local Government in accordance with section 93A(2) of the Act. The request for exemption is not automatically granted.

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

Significant Decisions include:

- (a) Irrevocable decisions that commit the Council to substantial expenditure or significant actions; and
- (b) Irrevocable decisions that will have a significant impact on the municipality or the community.

Council acknowledges that it has an ongoing responsibility to act in the best interests of the community. Therefore, where a delay in making a “significant decision” would result in significant detriment to the local community, or the broader community, Council may make an exception to this procedure where the issue:

- (a) Is urgent; and
- (b) Cannot be reasonably deferred without major negative repercussions; and where
- (c) The decision is significant; and
- (d) The decision relates to the completion of an activity already undertaken and endorsed by Council eg. via the Budget, Council Plan or long term strategies or policies, but does not meet the definition of ‘major policy’ in the Act.

It shall be the responsibility of the Chief Executive Officer to determine if a matter is significant and if it is urgent.

7 COMPLIANCE RESPONSIBILITIES

7.1 Distribution

The Chief Executive Officer is responsible for familiarising all Candidates with the policy.

7.2 Council Resources

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. **Council therefore commits to the principle that it will ensure that Council resources are not used inappropriately during a Council election.** This includes a commitment to comply with the requirements of section 55D of the Act.

Council resources, including offices, support staff, hospitality services, equipment, electronic equipment and stationery will be **used exclusively for normal Council business** during the election caretaker period, and shall not be used in connection with any electioneering activity.

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

7.3 Information

Information and briefing material prepared by staff for Councillors during the election caretaker period will relate only to factual matters or to existing Council services to assist Councillors in conducting normal day to day activities.

An **Information Request Register** will be established by the Manager, Administration Services and maintained by the Governance section, commencing on the 1st day of the caretaker period. This register will be a public document (available for inspection) that records all requests for information **by all candidates**, and the responses given to those requests.

Responses to candidates' requests will only be provided by Managers, Executive Managers, Directors or the Chief Executive Officer.

Section 76D of the Act prescribes serious penalties for any Councillor who inappropriately makes use of their position or information obtained in the role of Councillor, to gain an advantage.

Any **Freedom of Information (Fol) applications** lodged during the caretaker period on matters, expenses, costs, etc regarding current Councillors will be dealt with where possible outside of the caretaker period (The Fol Act specifies a 42 day period in providing a response to a Fol application).

7.4 Communication

Council communication **will not be used in any way** that might influence the outcome of a Council election.

Publicity of Council events will be restricted to the communication of normal Council activities. Media inquiries regarding the election or possible election outcomes will only be responded to by the Chief Executive Officer or the Executive Manager, Strategic Communications and Stakeholder Relations.

In the caretaker period no media releases will be issued quoting or featuring the Councillor(s). When issued, these will be concern themselves with facts only.

Councillor correspondence will be managed in the usual process. Correspondence addressed to councillors will not be responded to regarding any election matter during caretaker period. All correspondence responded to by councillors will not reference any election matter and will be restricted to normal council business.

7.5 Council Publications

Section 55D of the Act places limitations on Council from printing, publishing or distributing publications during the caretaker period. This is to ensure that Council does not utilise public funds that may influence, or be seen to influence, people's voting intentions.

Council must not print, publish or distribute a publication during the caretaker period **unless** it has been certified in writing by the Chief Executive Officer.

The Chief Executive Officer **must not certify** a publication that contains electoral matter – it is an offence, under section 55D of the Act, for the Chief Executive to contravene this requirement.

Section 55D also applies to the publication of material specified in clause 9.6 on Council's website. During the caretaker period Council's website will not contain material which is precluded by this Policy or the statutory requirements relating to publications. Any references to the election will only relate to the election process. Profiles of the current Mayor and Councillors will be removed from Council's website during the caretaker period but retain their contact details for their day-to-day role as Councillor.

Any new material published on Council's website during the caretaker period that **may** be considered to be an advertisement, handbill, pamphlet or notice must also be subject to the certification process. Council agendas, minutes and the annual report are considered exempt from certification.

The Annual Report will be compiled during the caretaker period and will not contain any material that could be regarded as electioneering or that inappropriately promotes individual Councillors. Information about Councillors will be restricted to names, contact details, titles, membership of Special Committees and other bodies to which they have been appointed by the Council.

Council's newsletter 'myballarat' will not be produced or distributed during the caretaker period.

7.6 Attendance at functions and events during election period

Council-organised events and functions held during the caretaker period will be reduced to only those essential to the operation of the Council. This may be varied by a Council resolution or where prior approval has been given by the Chief Executive Officer.

Councillors should refrain from delivering speeches or keynote addresses at Council-organised or sponsored events and functions during the caretaker period other than protocol speeches, such as short welcome and thank you speeches.

Any speech or address should have prior approval of the Chief Executive Officer or Executive Manager, Strategic Communications & Stakeholder Relations.

Councillors may continue to attend events and functions which are staged by external organisations during the caretaker period.

7.7 Assistance to Candidates

The Council affirms that all candidates for the Council election will be treated equally, fairly and without discrimination.

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.

All election 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 Chief Executive Officer or a designated member of Council staff.

8 CHARTER OF HUMAN RIGHTS COMPLIANCE

It is considered that this policy does not impact on any human rights identified in the *Charter of Human Rights Act 2007*.

9 REFERENCES AND RELATED POLICIES

ACT	LOCAL GOVERNMENT ACT 1989
REGULATIONS	LOCAL GOVERNMENT REGULATIONS 2004
GUIDANCE NOTES	LOCAL GOVERNMENT VICTORIA: GOVERNANCE PRACTICE NOTE NO. 5 – 'ELECTION CARETAKER ARRANGEMENTS'
COUNCIL DOCUMENTS	COUNCILLOR CODE OF CONDUCT

10 DISCLAIMER

Disclaimer

This Policy has been written to provide a guide only for Council staff, Councillors and candidates and is not a substitute for legal advice. Individuals should seek their own independent advice if they are unsure about any aspect of the *Local Government Act 1989* in relation to the caretaker period.

11 APPENDIX:

1. RELEVANT SECTIONS FROM *THE LOCAL GOVERNMENT ACT 1989*.

APPENDIX - RELEVANT SECTIONS FROM THE *LOCAL GOVERNMENT ACT 1989*

- Section 3 (1) Election period**
In relation to an election, means the period that –
- (a) starts on the last day on which nominations for that election can be received; and
 - (b) ends at 6pm on election day;

NB **Election Caretaker Period** has the same meaning.

Electoral advertisement, handbill, pamphlet or notice
means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting;

Publish
means publish by any means including by publication on the Internet;

- Section 3(1A)**
In this Act, “**electoral matter**” 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 returning officer for the purposes of conducting an election.

Nb **printed electoral matter** has the same meaning.

- Section 3(1B)**
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-
- (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.

- Section 55D Prohibition on Council {Publish Material}**
- (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**.
 - (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

Section 93A Conduct of Council During An 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 \$100,000 {or such higher amount as may be fixed by Order in Council under section 186(1)} or 1% of the Council’s revenue from rates and charges levied under section 158 in the preceding financial year;
 - (d) to exercise any power under Section 193 if the sum assessed under Section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100,000 or 1% of Council’s revenue from rates and charges levied under section 158 in the preceding

financial year.