

Governance Rule

Election Period Policy

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*Unless replaced, this policy will still apply beyond the review date.

Related internal policies, procedures and guidelines	<ul style="list-style-type: none">• Councillor Code of Conduct• Code of Conduct for Members of Council Staff
Related legislation	<ul style="list-style-type: none">• <i>Local Government Act 2020</i>

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Table of contents

Purpose	1
Scope	1
Legislative Context.....	1
Definitions	3
Policy.....	4
1. Council Decision Making	4
1.1 Prohibited decisions	4
1.2 Decisions enabling use of Council resources	4
1.3 Significant decisions	4
1.4 Decisions made under delegation	5
2. Public consultation and Council events	5
2.1 Public consultation	5
2.2 Council events.....	6
3. Council publications	6
3.1 Prohibition on publishing material.....	6
3.2 Approval of publications	7
3.3 Prohibited material	7
3.4 Council publications containing Councillor or Candidate information	8
3.5 Council's website.....	8
3.6 Annual Report	8
3.7 Council and Committee business papers	9
3.8 Social media.....	9
4. Council resources.....	10
4.1 Role of officers	10
4.2 Use of Council equipment by Councillors	10
4.3 Councillor reimbursement.....	11
4.4 Ward-specific publications and activities	11
4.5 Officer discretion	11
5. Media and publicity.....	12
5.1 Restriction on services	12
5.2 Media releases/Spokespersons	12

5.3	Councillors.....	12
5.4	Council officers.....	12
6.	Information	13
6.1	Candidate information	13
6.2	Member of Council Advisory Committee or other Committees standing for election	13
6.3	Members of Council staff standing for election.....	14
6.4	Information Request Register.....	14
6.3	Role of Returning Officer	14
6.4	Election Campaign Return.....	14
7.	Councillor conduct.....	15
7.1	Misuse of position.....	15

Purpose

The Governance Rule - Election Period Policy (Election Period Policy) has been developed in order to ensure that the general election for Nillumbik Shire Council on Saturday 26 October 2024 and subsequent elections are conducted in a manner that is ethical, fair and equitable, and are publicly perceived as such.

The Policy ensures that the ordinary business of Council continues throughout the election period in a responsible and transparent manner, in accordance with statutory requirements and established 'caretaker' conventions.

Scope

The Election Period Policy applies to all Council staff, Councillors and election candidates.

Council will function in accordance with this Policy during the election period commencing at 12.00am on Tuesday 24 September 2024 and concluding at 6:00pm on Saturday 26 October 2024.

The Election Period Policy addresses the legal requirements by providing guidance at an operational level to ensure compliance, and builds on the minimum statutory standards to enhance the transparency and accountability of Councillors and Council officers during the election period.

This Policy overrides any prior Council policy or document that refers to a 'caretaker' or election period.

Legislative Context

The *Local Government Act 2020* (the Act) sets out the provision regarding the responsibilities, functions and powers of Council in the period leading up to a general election.

Section 60 of the Act requires councils to adopt and maintain an Election Period Policy in accordance with section 69 in relation to procedures to be applied by Council during the election period for a general election.

A copy of this Policy should be given to each Councillor as soon as practicable after it is adopted, and be made available for public inspection at Council offices and on Council's website.

In the lead up to an election the Victorian local government sector adopts an election period (or caretaker) mode. During this period, Council will be deemed to be in election

period mode and is prohibited from making major policy decisions or publishing/distributing election material.

The next relevant Election Day is Saturday 26 October 2024.

The election period commences at noon on Tuesday 24 September 2024 to 6pm Saturday 26 October 2024.

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Definitions

Candidate	means a person who has nominated as a candidate for an election under section 256 of the Act
Councillor	means a person who holds the office of member of a Council
Delegated decisions	is a decision made under delegation and considered a decision of Council
Election Period	starts at the time that nominations close on nomination day; and ends at 6pm on election day
Electoral matter	means any matter which intended or likely to affect voting in an election
Information request register	is a register maintained and published on Council's website including all requests relating to electoral matters by Councillors and candidates
Member of Council staff	means a natural person appointed by the Chief Executive Officer
Penalty Unit	determine the amount a person is fined when they commit an infringement offence \$192.31, from 1 July 2023 to 30 June 2024
Prohibited decisions	As outlined in section 69 of the Act
Public consultation	is a process that involves an invitation to individuals, groups or organisations or the community generally to comment to Council on a matter
Significant decision	is a decision that commits the incoming council to financial commitments, significant undertakings and that could have a lasting and substantial effect on the municipality or community. More detail in 1.3
Social Media	for the purpose of this policy is Council's corporate social media accounts including Facebook, Twitter, Instagram or YouTube

Policy

1. Council Decision Making

Matters of Council business requiring major policy decisions or significant decisions are scheduled to enable a Council resolution prior to the commencement of the election period, or deferred where appropriate, for determination of the incoming Council.

1.1 Prohibited decisions

Section 69 of the Act prohibits any Council decision during the election period for a general election:

- a) Relating to the employment or remuneration of a Chief Executive Officer (CEO), but not to the appointment or remuneration of an Acting CEO;
- b) That commits the Council to expenditure which exceeds 1 per cent* of the Council's income from general rates, municipal charges and service rates levied in the preceding financial ; 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.

* For the purposes of the 2024 election period, 1 per cent of revenue from rates and charges of the adopted 2023/2024 Budget

A Council decision made in contravention of paragraph (a) or (b) above, is invalid and any person who suffers loss or damage as a result of acting in good faith on that decision is entitled to compensation from Council for the loss or damage.

1.2 Decisions enabling use of Council resources

During the election period for a general election or by-election Council is prohibited from making a decision that would enable the use of Council resources in a way intended to influence, or likely to influence voting at the election.

1.3 Significant decisions

A significant decision of Council includes:

- Decisions that commit the incoming Council to that could bind the incoming Council to financial commitments or other significant undertakings, such as utilising unbudgeted funds, allocating community grants, or providing direct funding to community organisations.

- Decisions that could have a lasting and substantial effect on the municipality or a significant segment of the community, including changes to planning schemes, unplanned community consultations, the adoption of new policies, strategies, or local laws, as well as alterations to strategic objectives and strategies outlined in the Council Plan.

1.4 Decisions made under delegation

A decision made under delegation is considered a decision by Council.

Prior to issuing delegated decisions during the election period the following points must be considered:

- a) Whether it is a prohibited or significant decision;
- b) Is the decision in the best interests of Council and the community;
- c) Can the decision be deferred and if there would be consequences or repercussions to Council in deferring a decision.

2. Public consultation and Council events

Limits are placed on public consultation and the scheduling of Council events during the election period.

2.1 Public consultation

Public consultation is a process that involves an invitation 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.

Public consultation will cease to be initiated as from 24 September 2024 and will not occur during the election period.

An exemption to the requirements of this Clause relate to statutory public consultation required under the *Planning and Environment Act 1987* or matters subject to section 223 of the *Local Government Act 1989* but only where the matter **could not be avoided** during the election period.

Consultations under statutory provisions or matters that facilitate the day-to-day business of Council shall only proceed after express agreement by the relevant Director in consultation with the Chief Executive Officer and if it relates solely to the normal day-to-day business of Council. Any such public consultations will avoid express or implicit links to the election and must receive prior approval from the CEO.

In view of the potential for a matter to become contentious or politically sensitive in the course of the election period, Council reserves the right to postpone a matter if the issue is likely to affect voting at the election.

Where public consultation commences prior to the election period, the results of that consultation will not be reported until after the election period, unless approved by the CEO.

2.2 Council events

Council will not schedule any events either sponsored by or under the auspices of or run by Council during the election period.

Council sponsored events include official openings, launches, events, and any other public forum.

Annual, recurring shire-wide community events that are scheduled to take place during the election period will proceed, but there will be no formal role for Councillors at these events.

All other Council events will be scheduled to take place outside of the election period. Any publicity materials related to these events will be subject to the publication constraints outlined in Clause 3 of the Policy.

Councillors may continue to attend external events and functions during the election period, however speeches, background briefings and other Council resources will not be provided by Nillumbik Shire Council. Councillors must not use external events and functions to promote themselves as an election candidate.

3. Council publications

3.1 Prohibition on publishing material

In light of the major commitment of Council resources that is required during an election period to assess whether or not Council documents contain electoral matter, there will be restrictions placed on the number of Council documents published during the election period.

Only publications deemed essential to the day-to-day operations of Council during the election period will be assessed for compliance with section 304(2) of the Act. These publications would include information to communicate a change or disruption to a Council service or an emergency which impacts on the health and wellbeing of community members.

All other documents must only be published either before or after the election period and not during that period. Council officers are to be given timely notification of the publication requirements of this Rule, and are required to schedule the publication of non-essential documents to a date outside of the election period.

3.2 Approval of publications

Publications to be printed, published or distributed during the election period must be assessed as to whether they contain electoral matter.

Publications which require assessment include:

- Brochures, pamphlets, handbills, flyers, magazines, e-newsletters and books;
- Reports (other than agenda papers and minutes as outlined in clause 3.4);
- Advertisements and notices except newspaper notices of meetings;
- New website material;
- Social media posts (including Facebook and Twitter);
- Emails with multiple addressees, used for broad communication with the community;
- Mass mail outs or identical letters sent to a large number of people by or on behalf of Council;
- Media releases;
- Material to publicise a function or event; and
- Any publication or distribution of Councillor speeches.

Only publications that CEO considers to be essential to the day-to-day operations of Council during the election period will be assessed for compliance and submitted for approval by the Director Governance, Communications and Community Safety during that period.

3.3 Prohibited material

Electoral matter as defined in the Act means any matter which intended or likely to affect voting in an election, but does not include any material produced by or on behalf of the election manager for the purposes of conducting an election.

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; or
- An issue submitted to, or otherwise before, the voters in connection with the election.

Electoral matter includes material which:

- Publicises the strengths or weaknesses of a candidate;
- Advocates the policies of the Council or of a candidate;
- Responds to claims made by a candidate;
- Publicises the achievements of the elected Council.

3.4 Council publications containing Councillor or Candidate information

Any reference to Councillors standing for re-election in Council publications printed, published or distributed during the election period must not include promotional text.

Council publications referencing either current Councillors or Candidates, both online and on public display, will be withdrawn from view during the election period.

Councillor contact information will remain available on the website during the election period, but Councillors' profiles will be removed.

3.5 Council's website

Material published on Council's website in advance of the election period is not subject to assessment, however existing material that is prominently displayed will be reviewed and consideration given to the removal of any such material that may be considered electoral matter, were it to be published during the election period.

No new material is to be published on Council's website during the election period unless it is considered to be essential to the operation of Council during that period.

Council Agendas, Minutes, and the Annual Report are considered exempt from the requirements of this section. Pursuant to the provisions of the *Local Government Act 2020*, Council is required to produce an Annual Report and the Annual Report 2024 will be published during the election period.

3.6 Annual Report

Council is required under section 98 of the Act to produce its Annual Report. The 2023-2024 Annual Report may be published during the election period. The

Annual Report will not contain any material that could be regarded as overt electioneering or that inappropriately promotes individual Councillors.

3.7 Council and Committee business papers

Council will not schedule Council or Planning and Consultation Committee meetings during the election period. Urgent business items that cannot be delayed and are not a prohibited decision under section 69 the Act or a significant decision, may be considered at an Extraordinary Council or Planning and Consultation Committee meeting.

Advisory committee or other committee meetings including reference group meetings, will not be held during the election period.

During the election period, if an Extraordinary Council or Planning Consultation Committee is called the CEO will ensure that every report includes an Election Period Statement specifying either:

- a) The recommended decision is not considered to be a major decision within the meaning of the Election Period Policy and has been approved by the Chief Executive Officer as appropriate for Council consideration during the election period.
- b) The recommended decision has been approved by the Chief Executive Officer as one that could not be reasonably deferred until the next Council is in place. It is considered appropriate for consideration by the Council during the election period for the following reason/s [insert reason/s].

During the election period, Council will not decide on any matter that does not include one of the Election Period Statements as outlined above.

The agenda papers and minutes of any Council or committee meetings which may need to be scheduled during the election period as a matter of urgency do not require assessment by Council staff unless they are printed or published for a wider distribution than normal.

3.8 Social media

Any publication on Council's corporate social media accounts including Facebook, Twitter, Instagram and the like during the election period must be assessed by Council staff.

No material is to be posted on any of Council's social media accounts during the election period, unless it is considered essential to the day-to-day operations of Council during that period.

Council officers responsible for administering individual social media accounts will monitor their respective accounts during the election period and must use moderation features where available to ensure no electoral matter is posted on these accounts.

Social media activity during the election period must conform with the following:

- (a) On Facebook and other social media pages, the “post comments” ability will be disabled.
- (b) Social media posts will be kept to a minimum, reflecting day-to-day activities only.
- (c) No launches or announcements of new projects, policy initiatives, or programs will be published.
- (d) YouTube videos to be made private and only those pertaining to operational matters of Council day-to-day activities allowed to remain active.
- (e) No hosting or responding to political content will be permitted.

The restrictions imposed by this Policy do not apply to the personal social media accounts of Councillors, provided that they do not use Council resources such as photographs taken by Nillumbik Shire Council.

4. 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 this principle in that it will ensure Council resources are not used inappropriately during an election period.

Council resources, including offices, vehicles, staff, hospitality, services, property, equipment and stationery must be used exclusively for normal Council business during the election period and must not be used in connection with any election campaign or issue.

4.1 Role of officers

The Executive Assistant to the Mayor and Councillors, Governance staff, or any other officers, must not be asked to undertake any tasks connected directly or indirectly with the election campaign of a Councillor standing for re-election.

4.2 Use of Council equipment by Councillors

Councillors may continue to use any Council equipment provided to them to facilitate their performance of normal Council duties, subject to existing protocols and terms of use. Councillors standing for re-election must not use Council

equipment (including mobile phones, tablets, laptops, computers or printers) as a resource to assist with election campaigns.

The allocated Mayoral motor vehicle must only be used for normal Mayoral activities during the election period and not to assist, or give the perception of assisting, an election campaign.

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

Photographs or images funded by the Council or captured by Council staff are prohibited from being used in election materials by any candidate or incumbent Councillor, including images taken of Councillors and Council events and infrastructure. This restriction encompasses images of Councillors, events, and any Council infrastructure.

This applies equally to:

- (a) images on Council websites or social media that may be able to be copied, and
- (b) posts and comments on social media that may be able to be forwarded and commented on.

4.3 Councillor reimbursement

Reimbursements of Councillors' 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 support or are connected with an election campaign.

Allocations on budget for Councillor allowances, e.g. seminars / training and attendance at conferences, are to be allocated on a pro rata basis between the commencement of the financial year and the election date, i.e., pro rata basis of 4 months out of 12-month period.

4.4 Ward-specific publications and activities

No Ward meetings are to be held during the election period. Ward-specific publications or Councillor profiles and articles in the media, will not be arranged or published by Council during the election period.

4.5 Officer discretion

Council will ensure that due propriety is observed in the use of all Council resources. Officers are required to exercise appropriate discretion in that regard. Where the use of Council resources appears to relate to the election campaign

of a Councillor standing for re-election, the matter must be referred to the CEO or their delegate.

5. Media and publicity

5.1 Restriction on services

Council's Communications and Engagement team undertakes the promotion of Council activities and initiatives.

During the election period, this team's services must not be used in any way that might promote a Councillor as an election candidate.

Council publicity during the election period will be restricted to communicating essential information relating to current services and operations. .

Contact with the media will be restricted to the communication of essential information relating to current services and operations and responding to questions not involving the election or possible election outcomes.

5.2 Media releases/Spokespersons

Media releases will not reference specific Councillors and will not identify any Councillor in a manner that could promote a Councillor as an election candidate. Where it is necessary to identify a spokesperson, the CEO or their delegate will be consulted.

Media releases will require assessment by the Director Governance, Communications and Community Safety.

Any requests from Councillors for media advice or assistance during the election period will be channelled through the Chief Executive Officer. No media advice or assistance will be provided to Councillors in relation to election campaign matters.

5.3 Councillors

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

5.4 Council officers

During the election period, no Council officer may make any public statement that relates to an election issue unless prior approval has been obtained by the CEO or their delegate.

6. Information

6.1 Candidate information

All election candidates have equal rights to information relevant to their election campaigns from the Council administration. While it is important that sitting Councillors continue to receive information that is necessary to fulfil their existing elected roles, neither Councillors nor candidates will receive information or advice (including any internal Council publications) from Council officers that may improperly advantage candidates in the election.

In conjunction with external organisations such as Victorian Electoral Commission, Municipal Association of Victoria, and Victorian Local Governance Association, where appropriate, Council officers will assist with the facilitation of candidate information sessions for election candidates or potential election candidates.

Information and any other briefing material prepared for Councillors during the election period will relate only to factual matters or existing Council services to assist Councillors in conducting normal day-to-day activities. Such information will be sent to Councillors by the Chief Executive Officer's Office or the appropriate Director.

Any Freedom of Information (FOI) requests lodged during the election period on matters regarding current Councillors will be dealt with in accordance with the statutory procedure prescribed by the *Freedom of Information Act 1982* (FOI Act). Where possible the request will be dealt with outside of the election period (the FOI Act specifies the timeframes in providing a response to an FOI request).

6.2 Member of Council Advisory Committee or other Committees standing for election

Upon becoming a candidate, any person who is a member of one of Council's advisory or other committees is expected to:

- Comply with this Policy;
- Inform the Chief Executive Officer;
- Take leave from the Advisory Committee or other committee; and
- Return any council equipment, documents or information which is not
 - available to the public for the duration of their candidacy and/or the
 - election period; and

- If elected, immediately resign from the Advisory Committee or other committee.

6.3 Members of Council staff standing for election

Any person who is a member of Council staff and intending to nominate as a candidate for election for Nillumbik Shire Council must:

- a) Take leave to stand as a candidate for election prior to the time of nominating as a candidate.
- b) If elected, resign from their Council staff position upon being declared an elected Councillor.

6.4 Information Request Register

The Governance Unit will maintain an Information Request Register during the election period. This Register will be a public document that records all requests relating to electoral matters and non-routine requests for information by Councillors and candidates, and the responses given to those requests. Details to be included within the Register include not only the request and response but also the name of the candidate making the request and the date the request was made.

Responses to candidate's requests for information will be provided by Directors or the Chief Executive Officer. Directors will be required to discuss the request and the proposed response with the Chief Executive Officer prior to the response being provided. Only information that can reasonably be accessed will be released.

Penalties exist for any Councillor who inappropriately makes use of their position or information obtained in their role of Councillor, to gain an advantage.

6.3 Role of Returning Officer

All election-related enquiries from candidates, whether sitting Councillors or not, will be directed to the election manager or, where the matter is outside the responsibilities of the election manager, to the CEO or their delegate.

6.4 Election Campaign Return

Further to section 306 of the Act, candidates will be advised of the requirements to complete and submit an Election Campaign Return to the CEO within 40 days after the election day. The Return must contain details of any campaign donation or gift valued at, or greater than the gift disclosure threshold, received.

7. Councillor conduct

7.1 Misuse of position

Section 123 of the Act outlines:

- (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.