

Bass Coast Election Period Policy 2020

Preamble

The *Local Government Act 1989* (the Act) provides that during the 'election period' certain prohibitions apply to the general functions and powers of Council. It is during this time that Council enters the caretaker period.

The 'election period' is defined by the Act as starting on the last day of nominations and ending at 6.00pm on the Election Day. The last day of nominations is the day that is 32 days before the Election Day.

The election period for the 2020 local government elections will commence at midnight on 22 September 2020 and ends at 6.00pm on 24 October 2020.

Policy objectives

The Election Period Policy has been developed to ensure that the general elections for Bass Coast Shire Council on 24 October 2020 and subsequent elections are conducted in a manner that is ethical, fair and equitable, and are publicly perceived as such.

The Policy also commits Council during the caretaker period to:

Avoid making significant new policies and decisions that could unreasonably bind a future Council; and

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 election.

This Policy applies during an 'election period' to cover:

- **decisions** that are made by Council;
- any **material** that is published by Council;
- attendance and participation in **functions and events**;
- the use of Council **resources**;
- access to Council **information**; and
- **media** services issues.

Policy statement

During an election period local government goes into caretaker mode avoiding actions and decisions which could be seen to be influencing voters or which will have a significant impact on the incoming Council.

The Act provides that the election period commences on Nomination Day and ends on Election Day. For the October 2020 election, Nomination Day will be 22 September 2020 and Election Day is 24 October 2020. Therefore the election period is between these two dates inclusive.

Why is an Election Period Policy required?

The Act specifically prohibits Council publishing or distributing electoral matter during the election period and the making of defined major policy decisions. These statutory requirements are minimum governance standards only.

In addition to providing guidance at an operational level to ensure compliance with those minimum standards, this Policy builds on the minimum statutory standards to enhance the transparency and accountability of Council, Councillors and Council staff during the election period. For example the Policy expands on the list of matters Council will treat as major policy decisions and provides a process for dealing with them.

This Policy must be complied with during an election period if ANY of the following apply to you if you:

- Are involved in making a **major policy decision**.
- Are involved in making a **significant decision** that will bind the incoming Council.
- Are about to publish written material which has reference in it to a **candidate** (which includes sitting Councillors) or **the election** or an **issue** before the voters in connection with the election.
- Are involved in the creation of any **Council publications** or **advertisements**.
- Are involved in any **public consultation** process.
- Are a sitting **Councillor** who is planning to attend a function or event.
- Supply **administrative support** to Councillors.
- Are a sitting Councillor requesting **access to Council information**.
- Are a sitting Councillor requesting **media advice or services**.

Operation of Policy

For the 2020 election, this Policy applies during the election period which:

- **STARTS** on Nomination Day - **22 September 2020** and
- **FINISHES** at 6:00pm on the Election Day - **24 October 2020**.

Policy decisions during the election period

This section of the Election period Policy applies to decisions made by Council, a special committee of Council, or a person acting under delegation given by Council.

- In the context of this policy, major policy decisions include:
- The appointment or dismissal of a Chief Executive officer, or the remuneration of a Chief Executive Officer
- Approval of contracts with a total value exceeding \$585,000 (this is 1% of Council's total revenue from rates and changes under s.158 in the preceding financial year; and

- The exercise of any entrepreneurial power under s.193.

In the context of this policy, significant decisions include major policy decisions AND;

- Approval of contracts that require significant funding in future financial years or are regarded as politically sensitive;
- Decisions that have significant impacts on Council's income or expenditure or that relate to expenditure on politically sensitive matters;
- Policy or strategic decisions

Scheduling consideration of major policy decisions

As a general principle, the Chief Executive Officer should, as far as is practicable, **avoid** scheduling major or significant decisions for the election period and instead; ensure that they are either:

- considered by Council prior to the election period; or
- scheduled for determination by the incoming Council.

Major policy decisions during election period

If a major policy decision cannot be scheduled prior to or after the election period, then you need to refer to the list below to determine whether it is affected by this Policy. If you are unsure about whether a decision falls within the list below, speak with the Chief Executive Officer in the first instance.

Proposed Policy Decision	Is it allowed?	Source
Entering into a contract with a total value exceeding either \$100,000 or 1% of Council's rates revenue (based on the preceding financial year), whichever is the greater (estimated at \$585,000)	No	This is prohibited by s93A of the Act.
Exercising any power under section 193 of the Act (entrepreneurial powers) where the sum assessed under section 193(5A) in respect of the proposal exceeds either \$100,000 or 1% of Council's rates revenue (based on the preceding financial year), whichever is the greater (estimated at \$585,000).	No	This is prohibited by s93A of the Act.
Any other significant decisions not specified above which will bind the incoming Council.	Only with the approval of Council	This is an internal Council requirement which goes beyond the statutory requirements. Refer 6.6.

Considerations for the Chief Executive Officer in giving approval

In the case of a significant decision referred to the Chief Executive Officer which is not expressly prohibited under section 93A of the Act, in deciding whether to give approval the Chief Executive Officer will need to have regard to a number of factors including:

- Whether the decision is ‘significant’
- The urgency of the issue (that is, can it wait until after the election?)
- The possibility of financial repercussions if it is deferred
- Whether the decision is likely to be controversial
- Whether the decision is in the best interest of the Council

What about the announcement of decisions made prior to the election period?

To avoid doubt, the Policy applies only to the actual making of decisions, not the announcement of decisions which have been made prior to the election period. However, as far as practicable such announcements should be made before the election period begins.

Significant decisions

Council’s Code of Conduct provides that in addition to the decisions specified in section 93A of the Act, Council will avoid making other decisions during the election period that are of a significant nature and which would unnecessarily bind an incoming council.

Significant Decisions include:

- Irrevocable decisions that commit Council to substantial expenditure or significant actions; and
- 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.

In making an exception to this procedure, Council will deal with the matter impartially, having regard to the long term interests of the community and as transparently as possible.

Often, the question of whether a decision is considered to be significant is raised in relation to planning matters. The following table sets out examples of ‘Significant’ and ‘Insignificant’ decisions, in relation to planning matters that may arise during the Caretaker Period.

Decision	Significant?	Comment	Consequences
A decision to issue a planning permit for a major development in accordance with the Bass Coast Planning Scheme.	No	The application has been assessed to be in accordance with existing policy and legislative requirements as articulated in the Bass Coast Planning Scheme and the <i>Planning and Environment Act 1987</i> .	Failing to make a decision in these instances could be an abdication of Council’s responsibilities under the <i>Planning and Environment Act 1987</i> and relegate the decision to the Victorian Civil and Administrative Tribunal.

Decision	Significant?	Comment	Consequences
<p>A decision to proceed with a Planning Scheme Amendment.</p>	<p>No</p>	<p>While the decision to proceed with an amendment is not deemed to be significant Council should be cautious of making these decisions.</p> <p>While the decision to proceed does not imply that Council will ultimately adopt the amendment, it does provide a level of implied approval for the proposal.</p> <p><i>On this basis Council will not be asked to consider proceeding with new amendments during the caretaker period</i></p>	<p>While there is no legislative penalty for Council as a consequence of this position, there may be complaints and perceptions of tardiness expressed by the development community. The basis of the decision to not proceed with amendments during the period is sound and can be utilised to explain the position to these stakeholders.</p>
<p>A decision to send submissions received in response to an exhibited Planning Scheme Amendment to an Independent Panel.</p>	<p>No</p>	<p>Essentially this a procedural decision in a situation where the decision to undertake the amendment has already been made by Council. The decision does not bind Council to adopt the amendment after the panel report is received. It is considered that these decisions should not be held up by the caretaker period.</p>	<p>Failure to allow the amendment to continue once the process has commenced could raise a number of complaints from both the developer and the community. Additionally, if the decision to proceed to panel is withheld, this may cause the amendment to lapse in accordance with S30 of the <i>Planning and Environment Act 1987</i>.</p>

Decision	Significant?	Comment	Consequences
Decision to adopt a Planning Scheme Amendment.	Yes	Adopting an amendment is adopting new policy and legislation to be incorporated into the Bass Coast Planning Scheme. This means that the outgoing Council is making a decision that which would unnecessarily bind an incoming council.	The caretaker period has been significantly shortened and it is unlikely that delaying the adoption of an amendment will have major consequences.

Caretaker Statement

In order to facilitate compliance with its commitment to ensuring appropriate decision making during elections, Council has adopted the following procedure in its Code of Conduct: -

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

The “Caretaker Statement” will specify one of the following:

- “The recommended decision is not a “Major Policy Decision”, as defined in section 93A of the *Local Government Act 1989*, or a “Significant Decision” within the meaning of the Code of Conduct”.
- “The recommended decision is not a “Major Policy Decision” within the context of the *Local Government Act 1989*. The recommended decision is a “Significant Decision” within the meaning of the Code of Conduct, but an exception should be made for the following reasons (insert reasons for making an exemption)”.
- “The recommended decision is to seek an exemption from the Minister because the matter requires a “Major Policy Decision” within the meaning of section 93A of the *Local Government Act 1989*”.
- “The recommended decision is a “Major Policy Decision”, as defined in section 93A of the *Local Government Act 1989*, but an extraordinary circumstances exemption was granted by the Minister for Local Government on [insert date]”.

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

Council publications during the election period

Prohibition on publishing materials during the election period

It is prohibited under the Act for Council:

- To print, publish or distribute; or

- To cause, permit or authorise others to print, publish or distribute on behalf of Council, any advertisement, handbill, pamphlet or notice that contains electoral matter during the Election Period.

Councillors are however, able to publish campaign material on their own behalf, but cannot purport for that material to be originating from, or authorised by, Council or the Bass Coast Shire (e.g. by use of Council logos).

Publication should be read broadly to include electronic information and web based productions.

The controls do not cover newspaper advertisements which simply announce the holding of a meeting or the election process itself.

Material is definitely electoral matter if it:

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

Considerations of Chief Executive Officer in granting publication approval

In considering whether to grant approval for the publication of material during the election period, in accordance with the provisions in the Act, the Chief Executive Officer:

Must not permit any materials to be published which include reference to the following:

- The election;
- A candidate in the election;
- A current Councillor; or
- An issue before the voters in connection with the election.

May approve publication of material which only contains information about:

- The election process itself; or
- Council information that does not include any reference to a current Councillor otherwise precluded by this Policy.

Bass Coast Shire Council Website and Social Media

During the election period the website, Facebook or Twitter will not contain material which contravenes this Policy. Any references to the election will only relate to the election process. 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 Council.

Annual Report

Due to the publication date of the 2019/2020 Annual Report occurring during the election period, it is affected by the legislative restrictions on publications and therefore will not include information about Councillors beyond what is required by the *Local Government (Finance and Reporting) Amendment Regulations 2011*.

Council Publications

Any Council publication which is potentially affected by this Policy will be reviewed by the **Governance Manager** to ensure that any circulated, displayed or otherwise publicly available material during the election period does not contain material that may be construed as 'electoral matter'. Electoral matter is defined as "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 purpose of conducting the election."

Public consultation during the election period

Prohibition

It is prohibited under this Policy for public consultation to be undertaken during the election period (either new consultation or existing) on an issue which is contentious unless prior approval is given by Council or the Chief Executive Officer.

For the purposes of this section, public consultation means a process which involves an invitation or invitations to individuals, groups or organisation or the community generally to comment on an issue, proposed action or proposed policy.

The requirements of this section do not apply to public consultation required under the *Planning and Environment Act 1987* with regard to both planning permit applications and planning scheme amendments, or matters subject to section 223 of the Act.

Approval for public consultations

Due to the prohibition in section 8.1, it is prudent for Council not to commission or approve any public consultation if such consultation is likely to run into the election period, unless prior approval is given by Council or the Chief Executive Officer.

Where public consultation is approved to occur during the election period the results of that consultation will not be reported to Council until after the election period, except where approved by the Chief Executive Officer.

Attendance at functions and events during the election period

In this part, reference to events and functions means gatherings of internal and external stakeholders to discuss, review, acknowledge, communicate, celebrate or promote a program, strategy or issue which is of relevance to Council and its community and may take the form of conferences, workshops, forums, launches, promotional activities, social occasions such as dinners, receptions and balls.

Public Events Staged by External Bodies

Councillors may continue to attend events and functions during the election period.

Council Events and Functions

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

Speeches/Keynote addresses

Councillors should not give speeches or keynote addresses at Council organised or sponsored events and functions during the election period.

Councillors may make short welcome speeches at Council organised or sponsored events and functions during the election period, subject to prior approval from the Chief Executive Officer.

Publication of promotional material

In preparing any material concerning a Council organised or sponsored function or event which will be published or distributed during the election period, such preparation must be consistent with the controls under this Policy.

Considerations in giving approval

In the case of a matter referred to the Chief Executive Officer in deciding whether to give approval, the Chief Executive Officer will need to have regard to a number of factors including:

- whether the decision is 'significant';
- the urgency of the issue (that is, can it wait until after the election?);
- the possibility of financial repercussions if it is deferred;
- whether the decision is likely to be controversial; and
- the best interests of Council.

Council resources

Council will ensure that due propriety is observed in the use of all Council resources, and Council staff are required to exercise appropriate discretion in that regard.

Council staff should avoid assisting Councillors in ways that could create a perception that they are being used for electoral purposes. 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.

Use of Council Resources

Council resources, including officers, support staff, hospitality services, equipment and stationery should be used exclusively for normal Council business during the election period, and should not be used in connection with an election.

Correspondence

General correspondence addressed to Councillors will be answered as usual. However, the Mayor will sign only the necessary minimum of correspondence during the caretaker period and correspondence in respect to significant, sensitive or controversial matters should be signed by the Chief Executive Officer. Replies will be prepared so as to protect Council staff from perceptions of political bias.

Expenses Incurred by Councillors

Payment or reimbursement of costs relating to Councillors' out-of-pocket expenses incurred during the election period should only apply to necessary costs that have been incurred in the performance of normal Council duties not campaigning, and not for expenses that could be perceived as supporting or being connected with a candidate's election campaign.

Council Branding and Stationery

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

Forums

No Community Forums will be held during the election period.

Access to Council Information

All candidates have equal rights to access public information relevant to their election campaigns from Council administration. Neither Councillors nor candidates will be provided information or advice from Council staff that might be perceived to support election campaigns, and there shall be transparency in the provision of all information and advice during the election period.

Information and Briefing Material

Information and briefing material prepared or secured by staff for a Councillor during the Election Period must be necessary to the carrying out of the Councillors' role and must not be related to election issues or to issues that might be perceived to be of an electoral nature.

Media and communications services

Council's communications services are intended to promote Council activity or initiatives and must not be used in any way that might favour a candidate.

Media advice

Any requests for media advice or assistance from Councillors during the election period will be channelled through the Chief Executive Officer or the Chief Executive Officer's delegate. No media advice or assistance will be provided in relation to election issues or in regard to publicity that involves specific Councillors.

Media releases/spokespersons

Media releases will not refer to specific Councillors. Where it is necessary to identify a spokesperson in relation to an issue the Chief Executive Officer will determine the appropriate person.

Publicity campaigns

During the election period, publicity campaigns, other than for the purpose of conducting the election will be avoided wherever possible. Where a publicity campaign is deemed necessary for a Council activity, it must be approved by the Chief Executive Officer. In any event, Council publicity during the election period will be restricted to communicating normal Council activities and initiatives.

Councillors

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

Council employees

During the election period no Council employee may make any public statement that relates to an election issue unless statements have been approved by the Chief Executive Officer.

Additional documents

The *Local Government Act 1989* guides this policy in particular:

- Section 55A Misleading or deceptive matters
- Section 55B Heading to electoral advertisements
- Section 55C Authors to be identified
- Section 55D Prohibition on Council
- Section 56 Distribution of printed electoral material
- Section 56A Power to request handing over of how to vote cards
- Section 57A Injunction
- Section 76D Misuse of position
- Section 93A Conduct of Council during election period
- Section 93B Council to adopt an Election Period Policy

Review process

Council must continue to maintain the election period policy in accordance with Section 93B of the Act.

Accountability process

The Governance Manager will ensure compliance with the requirements under this Policy. It is the role of the Chief Executive Officer to authorise all published material during the Caretaker Period to ensure Council is not distributing election material.

Approval

Adopted by Council at its meeting held on	Date 20/11/2019
Signed by the Mayor, Cr Brett Tessari	