



Election Period Policy 2019 – 2023

Purpose

The Election Period Policy has been developed in order to ensure that the general elections for the Baw Baw Shire on Saturday 24 October 2020* and subsequent elections are conducted in a manner that is ethical, fair and equitable.

**(In 2020, Baw Baw Shire will be utilising postal voting).*

Section 93B of the Local Government Act requires Council to prepare, adopt and maintain an Election Period Policy.

The Policy will facilitate the continuation of the ordinary business of local government in the Baw Baw Shire throughout the election period in a responsible and transparent manner, in accordance with statutory requirements and established 'caretaker' conventions.

This Policy also commits Council during the election period to:

- avoid making significant new policies or decisions that could unreasonably bind a future Council;
- 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;
- Limit public consultation and council events. If consultation must be undertaken or an event held during this time, Council must justify to the community on the special circumstances and how the risks of each influencing the election will be prevented; and
- Councillor candidates will be treated in the same way as other candidates with respect to access to council held information.

Definitions

Where terms used in this Policy are defined in the *Local Government Act 1989* ('the Act'), their use in this Policy is consistent with the definitions in the Act. Relevant sections of the Act are included in Attachment 1.

Definitions used in this Policy which are not defined by the Act are:

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<i>Publication</i>	Includes any means of publication including letters and information on the Internet.
<i>Public consultation</i>	Means a process that involves an invitation or invitations 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.
<i>Significant decision</i>	Means an irrevocable decision that significantly affects the municipality.

Scope

This Election Period Policy applies to all Councillors and Council officers during the election period for a General Election.

The election period commences on the last day on which nominations can be received and continues until 6pm on Election Day.

The election period of 2020 commences at midnight on 22 September and ceases at 6pm on 24 October 2020.

Legislative context

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 election period.

The 'election period' is defined by the Act as starting at 12 pm on the last day for nominations and ending at 6pm on the Election Day. The last day for nominations is the day that is 32 days before the Election Day.

Baw Baw Shire Council will invoke its Election Period Policy on the day that nominations close, that being 12pm Tuesday 22 September 2020.

This policy replaces and overrides any previous policy or document that refers to the (Caretaker) period.

The Election Period Policy must be adopted by Council it must be reviewed no later than twelve months from the commencement of the election period for the next election.

Related policies and documents

- Councillor and Audit Committee Expenses and Entitlements Policy 2016
- Meeting Procedure Local Law
- Councillor Code of Conduct
- Employee Code of Conduct
- Local Government Act 1989

Policy principles

During the election period this policy will ensure community confidence in the practices of Council, Councillors, Special Committees and Council officers. This policy establishes a series of election period practices which aim to ensure that actions of the current Council do not bind an incoming Council.

The policy covers:

- Major policy decisions that are made by Council;
- Scheduling consideration and announcement of major policy decisions;
- Inappropriate and significant decisions;
- Use of Council's resources including material published by Council;
- Access to information;
- Council's online presence including social media;
- Media;
- Attendance and participation at Council organised activities and events;
- Public consultation during the election period.

Policy detail

1. Roles and Responsibilities

1.1 Responsibility of Councillors

Councillors should be aware of their responsibilities in relation to improper use of position as outlined in the Act. Sections 76D and 76E of the Act prohibit Councillors from misusing their position.

Section 76D in relation to the election period ensures a fair election is held where Council resources are not used for campaign purposes or to influence voters.

1.2 Role of Chief Executive Officer

In addition to the Chief Executive Officer's (CEO) statutory responsibilities, the CEO or his or her delegate will ensure as far as possible, that:

- All Councillors and officers are informed of the application of this policy 30 days prior to the commencement of the election period;

- Matters of Council business requiring major policy or significant decisions are scheduled for Council to enable resolution prior to the commencement of the election period, or deferred where appropriate for determination by the incoming Council; and
- Guidelines to staff on the role and responsibilities of staff in the implementation of this policy are issued if appropriate.

2. Decision making during the election period

Major Policy Decisions

2.1.1 *Major Policy Decision* is defined by section 93A of the *Local Government Act* and means a decision:

- Relating to the employment or remuneration of a Chief Executive Officer (CEO), other than a decision to appoint an acting CEO;
- To terminate the appointment of a CEO;
- To enter into a contract the total value of which exceeds whichever is 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.
- To exercise any power under section 193 of the Act if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100,000 or 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year.

2.1.2 Prohibition on Council

During the election period, Section 93 of the Act prohibits Council, a special Committee or a person acting under a delegation given by the Council to make any major policy decisions.

Any major policy decision made during the election period is deemed to be invalid under the Act.

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.

2.1.3 Extraordinary Circumstances

If Council considers that there are extraordinary circumstances where the Baw Baw Shire's 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.

2.2 Significant Decisions

During the election period, Council will avoid making decisions that significantly affect the municipality and unreasonably bind the incoming Council.

Significant decisions include the following:

- Major planning and development decisions;
- Allocating community assistance grants and other forms of funding to community organisations; and
- Changes to the Council plan.

3. Public Consultation

3.1 Right to Postpone

Some public consultation activities may be necessary during the election period to facilitate the day to day business of Council and ensure matters continue to be proactively managed.

Any such public consultations will avoid express or implicit links to the election.

In view of the potential for a matter or issue 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.

Council will not continue or commence public consultation on any contentious or politically sensitive matter after the commencement of the election period.

Any public consultation that is likely to run into the election period must have prior CEO approval. Where approved, results of such consultation will not be reported to Council until after the election.

3.2 Statutory Requirements

The requirements of Clause 3.1 do not apply to public consultation required pursuant to the *Planning and Environment Act 1987* or matters subject to Section 223 of the Act.

4. Council events

Councillors, including those standing as candidates, may continue to attend Council events and functions.

Speeches will continue to be prepared for the Mayor's official functions and will be authorised by the CEO.

5. Council Publications

5.1 Prohibition on Publishing Material during the Election Period

Section 55D of the Act prohibits Council from printing, publishing or distributing or causing, permitting or authorising to be printed, published or distributed any advertisement, handbill, pamphlet or notice during an election period unless it has been certified, in writing, by the Chief Executive Officer.

The Chief Executive Officer must not intentionally or recklessly certify a publication that contains electoral matter, unless that material is only about the election process.

The CEO must not delegate the power to certify any advertisement, handbill, pamphlet or notice under this section to a member of Council staff.

5.2 Certification of Publications

Publications to be printed, published or distributed during the election period must first be certified by the Chief Executive Officer.

The certification by the Chief Executive Officer will be in writing on or affixed to a copy of the publication and be in the following form:

'Certified by the Chief Executive Officer in accordance with Section 55D of the Local Government Act 1989.'

Copies of all certified documents will be retained on Council records.

Publications which require certification include:

- Brochures, pamphlets, handbills, flyers, magazines and books;
- Reports (other than agenda papers and minutes in accordance with Section 7.7);
- Advertisements and notices, except newspaper notices of meetings;
- New website material;
- Social media publications (which includes Facebook, Instagram and Twitter posts);
- Emails with multiple addresses, 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 Councillors' speeches.

5.3 Prohibited Material

Electoral matter is defined in the Act and means any matter which is intended or likely to affect voting in an election, but does not include:

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- Any electoral material produced by or on behalf of the returning officer for the purposes of conducting an election, or
- An advertisement in a newspaper announcing the holding of a meeting.

A publication is taken to contain electoral matter if it contains an express or implicit reference to, or comment on:

- The election; or
- 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.

5.4 Council Publications Including Councillor Information

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

5.5 Website

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

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

Any material published on Council's website during the election period must be certified by the Chief Executive Officer.

5.6 Annual Report

Council is required by the Act to produce and put on public display a copy of its Annual Report. The 2019/2020 Annual Report will 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.

The Annual Report does not require certification by the Chief Executive Officer, however any publication of an extract or summary of the Annual Report will require certification.

5.7 Council and Committee Agendas and Minutes

Agenda papers and minutes of Council and Committee meetings do not require certification by the Chief Executive Officer unless they are printed or published for a wider distribution than normal.

Papers prepared for Council or special committee meetings during the election period will be carefully vetted to ensure that no agenda item is included that could potentially influence voter's intentions at the the forthcoming election or could encourage councillor candidates to use the items as part of their electioneering.

All councillors will refrain from moving motions or raising matters at meetings that could potentially influence voting at the election.

Items submitted for Community Participation Time will be reviewed to ensure that they comply with the principles of the Act and this policy, and may be amended accordingly before publication.

5.8 Social Media

Any publication on social media sites including Facebook, Twitter, blogs and wiki pages during the election period must be certified by the Chief Executive Officer.

Staff responsible for administering individual social media sites will monitor their respective sites during the election period and use moderation features where available to ensure no electoral matter is posted.

6. Council Resources

6.1 Application of Resources

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.

6.2 Role of Council officers

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

6.3 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 as a resource to assist with election campaigns.

6.4 Councillors' Entitlement to 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 a candidate's election campaign.

6.5 Council Branding

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

6.6 Cessation of Ward Specific Publications

Ward-specific publications or Councillor profiles will not be arranged by Council during the election period.

6.7 Officers' Discretion

The 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. 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 Chief Executive Officer or his or her delegate.

7. Media Services

7.1 Restriction on Services

Council's Communications team undertake 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 normal Council activities and initiatives and subject to certification by the Chief Executive Officer.

7.2 Media Releases/Spokespersons

Media releases will minimise references to 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 Chief Executive Officer or his or her delegate will be consulted.

Media releases will require certification by the Chief Executive Officer.

7.3 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.

7.4 Council Employees

During the election period no Council employee may make any public statement that relates to an election issue unless prior approval has been obtained by the Chief Executive Officer or his or her delegate.

8. Information

8.1 Candidates' Access to 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 from Council officers that may improperly advantage candidates in the elections (which includes publications such as Councillor News).

There will be complete transparency in the provision of all information and advice during the caretaker period.

8.2 Information Request Register

Governance 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.

8.3 Improper Use of Position

Sections 76D and 76E of the Act prohibit Councillors from misusing or inappropriately making use of their position. A breach of section 76D attracts serious penalties, including possible imprisonment.

9. Assistance to Candidates

9.1 Role of Returning Officer

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 his or her delegate.

9.2 Candidate Information

Council will provide candidates with a Councillor Candidate Information Kit to assist them in running and nominating for Council.

Candidates will be informed of their obligation to complete a Nomination Form which will be available from the Returning Officer, accompanied by the nomination fee of \$250.

Candidates will also be informed of the requirements to complete and submit an 'Election Campaign Return' to the Chief Executive Officer within 60 days after the election day. The return must contain details of any campaign donation or gift valued at more than \$500 which was received between 30 days after the previous election and 30 days after the current election.

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Effective from	13 November 2019
Review term	Council term
Next review date	August 2023
Responsible position	Manager Governance
Responsible director	Corporate and Community Services
Version	1.0

Attachment 1

Relevant Sections from the Local Government Act 1989

Section 55D Prohibition on Council

- (1) A Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer.
- (2) The Chief Executive Officer must not intentionally or recklessly certify an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process.

Penalty: 60 penalty units.

- (3) Despite section 98(2), the Chief Executive Officer must not delegate the power to certify any advertisement, handbill, pamphlet or notice under this section to a member of Council staff.
- (4) A Councillor or member of Council staff must not intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during the election period on behalf of, or in the name of, the Council or on behalf of, or in the name of, a Councillor using Council resources if the electoral advertisement, handbill, pamphlet or notice has not been certified by the Chief Executive Officer under this section.

Section 3(1) Definitions

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 6 p.m. on election day;

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;

- (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.
- (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 76B Primary principle of Councillor conduct

It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must—

- (a) act with integrity; and
- (b) impartially exercise his or her responsibilities in the interests of the local community; and
- (c) not improperly seek to confer an advantage or disadvantage on any person.

76BA General Councillor conduct principles

In addition to acting in accordance with the primary principle of Councillor conduct specified in section 76B, in performing the role of a Councillor, a Councillor must—

- (a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
- (b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- (c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons;

- (d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
- (e) endeavour to ensure that public resources are used prudently and solely in the public interest;
- (f) act lawfully and in accordance with the trust placed in him or her as an elected representative;
- (g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

76D Misuse of position

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

600 penalty units or imprisonment for 5 years or both.

- (2) For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee include—
 - (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of section 77(2); or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using public funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under this Division.
- (3) This section—

(a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of special committees; and

76E Improper direction and improper influence

- (1) A Councillor must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Council staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A Councillor must not direct, or seek to direct, a member of Council staff—
 - (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or
 - (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
 - (d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.
- (3) This section does not apply to a decision of the Council or a special committee that is made within the powers, duties or functions conferred under this or any other Act.

76C Councillor Code of Conduct

- (1) A Council must develop and approve a Councillor Code of Conduct for the Council within 12 months after the commencement of section 15 of the Local Government Amendment (Councillor Conduct and Other Matters) Act 2008.
- (2) A Council must review the Councillor Code of Conduct within the period of 12 months after a general election.
- (3) A Councillor Code of Conduct—
 - (a) must include the Councillor conduct principles;
 - (b) may set out processes for the purpose of resolving an internal dispute between Councillors;
 - (d) must include provisions in respect of any matter prescribed for the purpose of this section;

(e) may include any other matters relating to the conduct of Councillors which the Council considers appropriate.

- (5) A Councillor Code of Conduct must not be inconsistent with any Act or regulation.
- (5A) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act or regulation.
- (6) A copy of the current Councillor Code of Conduct must be—
 - (a) given to each Councillor;
 - (b) available for inspection by the public at the Council office and any district offices.
- (7) On and from the commencement of section 15 of the Local Government Amendment (Councillor Conduct and Other Matters) Act 2008, a Councillor Code of Conduct is taken to include the Councillor conduct principles.

93A Conduct of Council during election period

- (1) Subject to this section, a Council, a special Committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.
- (2) If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.
- (3) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.
- (4) A major policy decision made in contravention of this section is invalid.
- (5) Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.
- (6) In this section, a major policy decision means any decision—
 - (a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;

- (b) to terminate the appointment of a Chief Executive Officer under section 94;
- (c) to enter into a contract the total value of which exceeds whichever is the greater of—
 - (i) \$100 000 or such higher amount as may be fixed by Order in Council under section 186(1); or
 - (ii) 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year;
- (d) to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year.

95 Conduct principles

- (1) Council staff must in the course of their employment—
 - (a) act impartially;
 - (b) act with integrity including avoiding conflicts of interest;
 - (c) accept accountability for results;
 - (d) provide responsive service.
- (2) Nothing in subsection (1)(c) affects the granting of an indemnity to a member of Council staff in respect of any liability or limits the effect of —
 - (a) any such indemnity, whether granted before or after the commencement of section 67 of the *Local Government (Democratic Reform) Act 2003*; or
 - (b) any immunity conferred on a member of Council staff by or under any Act, whether before or after that commencement.