

ELECTION PERIOD POLICY 2016

1. Introduction

This policy is a requirement of section 93B of the *Local Government Act 1989* ('the Act') and has been developed to ensure that Wyndham City Council's local general elections to be held on Saturday, 22 October 2016, and subsequent elections, are conducted in a manner that is ethical, fair and equitable and are publicly perceived as such.

2. Objectives

- 2.1 This policy facilitates the continuation of Council's ordinary business throughout the election period in a responsible and transparent manner, in accordance with statutory requirements and established 'caretaker' conventions.
- 2.2 This policy applies to Council staff, Councillors and candidates and explains how Council will conduct its business during the election period to ensure that the elections are not compromised by inappropriate electioneering by existing Councillors and safeguards the authority of the incoming Council.
- 2.3 This policy aims to address and provide guidelines in respect of the matters listed below:
 - Council decision-making
 - Public consultation, meetings and Council events
 - Use of Council resources
 - Access to Council information and assistance to candidates
 - CEO certification
 - Media and publicity
 - Section 76D of the Act (misuse of position)

3. General

3.1 During the election period, Council:

- will not make 'major policy decisions'
- will not make 'significant policy decisions' (i.e. that significantly affect the community or unreasonably bind the incoming Council)
- will ensure that Council resources are not used for election campaign purposes, nor in a way that might improperly influence the result of an election
- will limit public consultation, public meetings and Council events in order to facilitate Council's day to-day business while avoiding any express or implied links to the election
- will not print, publish or distribute 'electoral matter'

3.2 Other relevant policies

Councillors will meet their obligations under this policy in ways that are consistent with other Council policies and procedures as are applicable, including, but not limited to:

- Confidential Information Policy 2013
- Councillor Access to Information Protocol 2013
- Councillor Events, Invitations and Administrative Support Policy 2014
- Councillor-Staff Interaction and Email Policy 2014
- Media Relations Policy 2013

3.3 Election period

The 'election period' (also known as the 'caretaker period') refers to the period commencing on the last day on which nominations for the election can be received ('nomination day') and continues until 'election day'.

For the 2016 elections, the election period starts on Wednesday, 21 September 2016 and ends at 6pm on Saturday, 22 October 2016.

Policy

4. Council Decision-making

4.1 Major policy decisions

Section 93A of the Act prohibits the making of 'major policy decisions' during the election period unless an exemption has been granted by the Minister.

Prohibited decisions cover the employment of the CEO, entry into contracts and the exercise of entrepreneurial powers and are as follows:

(a) CEO

Council must not, during the election period, make a decision:

- that relates to the employment or remuneration of the CEO, other than a decision to appoint an acting CEO
- to terminate the appointment of the CEO

(b) Contracts

Council must not enter into a contract with a value in excess of the equivalent of 1% of Council's rates and charges levied under section 158 of the Act in the preceding financial year. For the 2016 election, this amount is \$1,600,000 (exclusive of GST).

(c) Entrepreneurial powers

Council must not exercise any entrepreneurial power under section 193 of the Act if the value of the total investment involved and total risk exposure of the proposal exceeds the equivalent of 1% of Council's rates and charges levied under section 158 of the Act in the preceding financial year. For the 2016 election, this amount is \$1,600,000.

4.2 Seeking a Ministerial exemption

As determined by the CEO and pursuant to section 93A(2) of the Act, Council may, by resolution, seek an exemption from the Minister for Local Government if Council considers that there are extraordinary circumstances which require the making of a major policy decision.

4.3 Significant policy decisions

In addition to complying with the statutory prohibition on major policy decisions, Council will use all reasonable endeavours to avoid making significant decisions.

For the purposes of this policy, significant policy decisions include, but are not limited to:

- decisions that may irrevocably commit the incoming Council to substantial expenditure or to other significant actions e.g. spending unbudgeted monies, the allocation of community grants or other direct funding to community organisations
- decisions that may have an irrevocable and significant impact on the municipality or a significant section of the community e.g. major planning scheme amendments, unplanned community consultation, endorsing a new policy or changes to strategic objectives and strategies in the Council Plan.

4.4 Significant policy decision considerations

Where possible, the CEO will ensure that any anticipated significant policy decisions are scheduled for Council to consider and determine prior to the start of the election period or are scheduled for determination by the incoming Council.

During the election period, the CEO will determine if a significant policy decision is required and will advise Council accordingly. In making any such determination, the CEO will have regard to all of the circumstances, including, but not limited to:

- whether the decision is, in fact, significant
- the urgency of the decision (i.e. if the decision could reasonably be made by the incoming Council)
- whether the decision is likely to be controversial or affect voting in the election
- whether the decision would require the spending of unbudgeted monies
- whether the decision is in respect of the completion of an activity already commenced and has been endorsed by the incumbent Council
- whether the decision requires community engagement
- whether the failure to make a particular decision would have a negative impact on Council, the municipality or the local community
- whether the disadvantage of avoiding making the decision exceeds the benefit of making the decision
- any relevant statutory obligations and timeframes
- the best interests of the community and Council

4.5 Caretaker statement

During the election period, the CEO will ensure that a 'caretaker statement' is included in every report submitted to Council or to a special committee for a decision. The caretaker statement will be in like form to one of the statements below:

1. *"The recommended decision is not a 'major policy decision' as is defined in section 93A(6) of the Local Government Act 1989, nor is it a significant decision within the meaning of Council's Election Period Policy 2016".*
2. *"The recommended decision has been determined by the CEO to be a 'significant policy decision' within the meaning of Council's Election Period Policy 2016 for the reasons set out below:"*
3. *"The recommended decision is a 'major policy decision' as defined in section 93A(6) of the Local Government Act 1989, and the Minister for Local Government has granted an exemption."*

5. Public consultation, meetings and Council events

5.1 Limited public consultation

Council will limit public consultation primarily to any consultation required under the *Planning and Environment Act 1987* and matters subject to section 223 of the Act. Public consultation may also be required in other circumstances to ensure that Council's normal activities are proactively managed. All public consultation will avoid any express or implied links to the election and will only be undertaken with the CEO's prior approval.

5.2 Public meetings and Council events

Council meetings and Council events will be held if they are part of the normal services or operational activities of Council e.g. scheduled ordinary Council meetings and citizenship ceremonies. Meetings and events that fall outside Council's normal business must have the prior approval of the CEO. Portfolio Committee meetings will not be held during the election period.

5.3 Councillors may attend Council meetings and Council events in their official capacity only and are not permitted to raise matters or issues that relate in any way to the election. Councillors and candidates are not permitted to use events and meetings as forums for electioneering purposes, and must not distribute election material.

5.4 Councillor roles at events are restricted to ceremonial, MC or similar duties only where a Councillor would ordinarily perform such duties. These duties must be performed in line with organisational protocols and Councillors must not use these events for the purposes of electioneering.

5.5 All speeches and running sheets informing Councillor roles at events will be approved by the CEO.

6. Use of Council Resources

6.1 Council will ensure that due propriety is observed in the use of all Council resources during the election period. Council resources include financial, human (e.g. a staff member's or a consultant's time) and material resources. In circumstances where it is unclear if the use of Council resources is related, or may be perceived as being related, to a candidate's election campaign, the use should be referred to the CEO for a determination.

6.2 The following specific restrictions apply:

- (a) Council resources, including, but not limited to, offices, staff, hospitality services, equipment, stationery and use by the Mayor of a Council-owned vehicle, may be used for normal Council business only during the election period and must not be used in connection with a candidate's election campaign.
- (b) Reimbursement of Councillors' out-of-pocket expenses during the election period will continue to apply to expenses incurred in the performance of normal Council duties only. Expenses that are, or could be, perceived as supporting or being connected with a candidate's election campaign will not be reimbursed. The CEO's determination in the event of a dispute is final.

- (c) Council's logo, letterhead, or any other Council branding may not be used for, or associated in any way with, a candidate's election campaign.
- (d) Where Councillors receive Council-funded equipment or services e.g. mobile phones, land lines and internet connections, use by the Mayor of a Council-owned vehicle, and it is impractical to discontinue that use during the election period, the Councillor will reimburse Council for the costs of using the services that is over and above their use for Council business. In the case of the Mayoral vehicle, the Mayor may be required to record distances travelled and the purpose of that travel where it is not for Council business.

7. Access to Council Information and assistance to candidates

7.1 Council acknowledges that candidates expect Council to respond to their requests for information that relates to the election. Any such requests will be responded to equitably and as though all candidates have made the same request. Accordingly, all candidates will receive the same information. Incumbent Councillors will continue to receive information that is necessary to fulfil their Council roles.

7.2 All candidates will be treated equally which means that:

- (a) 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.
- (b) All election process-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 CEO or a designated member of Council staff.
- (c) Photographs or images paid for by Council or taken by Council staff must not be used in election material by any candidate or incumbent Councillor. This extends to images of Councillors, events and any Council infrastructure.
- (d) Council logos or letterheads may not be used for, or linked in any way to, a candidate's election campaign.

7.3 Councillors and other candidates will not be provided with information or advice from Council staff that may be perceived to support their election campaign. There will be complete transparency in the provision of information and advice during the election period. The following specific restrictions apply:

- (a) Information and briefing materials prepared by staff for Councillors during the election period will relate only to factual matters or to existing Council services or projects. Such information will not relate to policy development, new projects or matters that are the subject of public or election debate or that might be perceived to be connected with a candidate's election campaign.
- (b) An Information Request Register will be maintained during the election period. The Register will be made available for inspection by the public and will record all requests for information by Councillors and candidates, and Council's responses.

- (c) Requests for information which require the use of significant Council resources in order to provide a response, or which might be perceived to support an election campaign, will be referred to the CEO for a determination as to whether a response may be provided.

8. CEO Certification

8.1 Publishing and 'electoral matter'

Section 55D of the Act places restrictions on Council publications during the election period and prohibits the publication of 'electoral matter'. This is to ensure that Council does not utilise public funds in publishing material that may influence, or be seen to influence, voting in an election.

Council must not print, publish or distribute any 'advertisement, handbill, pamphlet or notice' during the election period unless it has first been certified in writing by the CEO as not containing electoral matter. The CEO is not permitted to delegate the authority to certify publications.

Electoral matter is widely defined as any matter that is intended, or is likely to, affect voting in an election. It includes, but is not limited to, material about the election, incumbent Council, election candidates and issues of contention in the election. The definition of 'publish' extends to information published on Council's website and on social media. It does not include material produced by the Returning Officer for the purpose of conducting the election, information about the election process, advertisements announcing the holding of meetings and statutory documents e.g. rates notices, food premises registrations and parking fines.

8.2 Some examples of what constitutes electoral matter are material that:

- publicise the strengths or weaknesses of a candidate
- advocates Council policies or those of a candidate
- responds to claims made by a candidate
- publicises the achievements of the incumbent Council or individual Councillors
- refers to matters known to be contentious in the community and likely to be the subject of election debate
- refers to Councillors or candidates by name e.g. the Mayoral column

The wide definition of electoral matter means that Councillors must give careful consideration to communication activities in their capacity as a Councillor during the election period and the run up to the election period.

To minimise the risk of inadvertent publishing that contains electoral matter, it is best practice for Council to avoid publication activity during the election period, except where it is essential for the conduct of Council operations.

8.3 Council publications affected

The Council publications affected during the election period include, but are not limited to, the following:

- Media releases, media responses and media advice
- Social media
- Wyndham News and other Council publications
- Advertising
- Council's website
- Events and launches with accompanying speeches
- Mayoral column
- Email and correspondence
- Mail-outs
- Council branding and stationary (including logos, letterhead and business cards)

8.4 Annual report

The Annual Report is not considered to be an advertisement, handbill, pamphlet or notice and as such will not require certification by the CEO. However, the Annual Report must not include material that may be seen as electioneering or publicising attributes or achievements of individual councillors. If Council prints or distributes a greater number of copies than usual, this may be regarded as a pamphlet and would be subject to certification by the CEO. Any publication of an extract or summary of the Annual Report will be regarded as a pamphlet and must be certified by the CEO.

8.5 CEO certification process

Election period publication guidelines and a CEO certification process are in place for Council staff to refer to and follow respectively. This is to obtain the CEO's prior certification for election period publications in order to comply with section 55D of the Act. The guidelines and CEO certification process should be read in conjunction with this policy.

9. Media and Publicity

9.1 Council issued communications

Council publicity that contains general ongoing Council news or information about the election process is permitted, subject to prior certification by the CEO. Council publicity will not be used in any way that might influence the outcome of the election and will not quote or feature Councillors.

9.2 The following specific requirements apply during the election period:

- (a) Council staff must not make any public statement that could be construed as influencing the election. This does not include statements of clarification that have the prior approval of the CEO.
- (b) Public events and related publicity campaigns, other than for the purpose of conducting the election, will be avoided wherever possible. Where a public event or publicity campaign is deemed necessary for a Council service or function, it must have the prior approval of the CEO.
- (c) All media releases, responses or statements will be issued in the name of the CEO. The CEO alone is permitted to respond to questions from the media.
- (d) Wyndham News and Ward newsletters will be distributed subject to the prior approval of the CEO (and CEO certification) on the basis that the CEO has determined that distribution is necessary to provide information to residents on a matter that cannot be conveyed by other means.
- (e) Council will continue to run paid advertisements in Wyndham's local newspapers where they are considered to be essential for Council operations and subject to the CEO's approval.
- (f) Any increase in the publication, distribution or availability of a particular publication must be approved by the CEO. Existing material available to the public e.g. in libraries, the civic centre and community centres will be assessed for inclusion of electoral matter and any such matter will be temporarily withdrawn or not prominently displayed in so far as this is practicable in the circumstances.

9.3 Council websites and social media

During the election period, information about Councillors on Council's websites will be restricted to portrait photographs, names, titles, contact details and their membership of committees and other bodies to which they have been appointed by Council.

Council's website will be reviewed before the commencement of the election period to identify and temporarily remove any existing material that might be construed as electoral matter.

Council-hosted social media (e.g. blogs, Facebook and Twitter) may only be used for the conduct of essential Council business and social media publications will require prior certification by the CEO.

9.4 Councillor-issued communication

- (a) Any requests for media advice or assistance from Councillors during the election period must be channelled through the CEO. In any event, no media advice or assistance may be provided by staff in relation to election campaign matters, or in regard to publicity that involves specific Councillors.
- (b) Councillors are not permitted to use their position as elected representatives or their access to Council staff and other Council resources to gain media attention in support of their election campaign.

- (c) Councillors and other candidates are permitted to issue their own media releases provided they do not use Council resources, including email, logo or any branding, letterhead or any Council-owned device. Councillors and candidates must make it clear that the views expressed are personal views only, and not the views of the Council.
- (d) Councillors are not permitted to comment in an official capacity on any issues raised by the media during the election period. Any comments made to the media must be expressed as personal views only and not the views of Council.
- (e) Only Councillors in office may use the title of 'Councillor' in electoral material.
- (f) Councillors are not permitted to comment in an official capacity in respect of an electoral matter raised on social media during the election period. Councillors are not permitted to use social media as Councillors to respond to election issues.
- (g) Election candidates may be contacted by social media for comment on local issues during the election period. Councillors (as candidates) may comment provided they make it known to the parties that the views expressed are their personal views and do not represent the views of Council.
- (h) Councillors standing for re-election must carefully manage the use of their existing online profiles when utilising social media for re-election purposes. Councillors are encouraged to set up separate accounts, pages, profiles or presences in their capacity as election candidates.
- (i) Council resources (e.g. Internet access, mobile phones, Council logos) must not be used in connection with setting up or maintaining any social media presence as candidates.

10. Section 76D – Misuse of Position

10.1 Councillors and special committee members are reminded that pursuant to section 76D of the Act, they must not misuse their position:

- (a) to gain (or attempt to), directly or indirectly, an advantage for themselves or another person, or
- (b) to cause (or attempt to) detriment to Council or another person

The penalty is 600 penalty units or imprisonment for five years or both.

10.2 Circumstances that constitute a misuse of position, include, but are not limited to:

- (a) making improper use of information acquired as a result of a position held
- (b) disclosing information that is confidential (within the meaning of section 77(2) of the Act – following changes to the Act, this attracts a penalty of 120 penalty units.
- (c) directing or improperly influencing (or seeking to do so) a member of Council staff in contravention of section 76E of the Act – following changes to the Act, this attracts a penalty of 120 penalty units.
- (d) exercising (or purporting to exercise) a power, duty or function with no authority to do so
- (e) using public funds or resources in an improper or unauthorised manner
- (f) failing to disclose a conflict of interest

11. Policy Review

This policy provides guidance for the 2016 elections and will be reviewed and amendeded, if required, no later than 12 months prior to the commencement of each subsequent general election period.